DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2016

THURSDAY, MAY 14, 2015

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:04 a.m., in room SD–124, Dirksen Senate Office Building, Hon. Roy Blunt (chairman) presiding.

Present: Senators Blunt, Shelby, Alexander, Lankford, and Murray.

NATIONAL LABOR RELATIONS BOARD

STATEMENT OF MARK GASTON PEARCE, CHAIRMAN

OPENING STATEMENT OF SENATOR ROY BLUNT

Senator BLUNT. The Appropriations Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies will come to order.

We are certainly glad to have Mark Gaston Pearce, the chairman of the National Labor Relations Board, and Richard Griffin, the General Counsel of that Board, here today. Look forward to hearing your testimony and discussing issues and priorities at the National Labor Relations Board.

This is the first oversight hearing of this committee the National Labor Relations Board (NLRB) in 7 years. I am glad we have the opportunity to have this forum to review the budget and recent decisions that the Board has made.

During the Obama Administration, the NLRB's budget has increased by 8.9 percent, while its caseloads remain relatively flat. To put this in perspective, biomedical research funding has increased during that same period of time by 1.5 percent.

For fiscal year 2016, the NLRB has requested another significant increase, including an increase of 30 full time employees. At the same time, the NLRB's policy and regulatory agenda ignore current law as well as long-standing precedent in areas that I am sure we are going to talk about today.

For example, the contemplated change to the joint employer standard would depart from the intent of the revised National Labor Relations Act and judicial precedent in NLRB vs. Browning-Ferris. It would also depart from NLRB's own past policy and case

precedent. The joint employer standard is not the only case that causes concern. The NLRB has initiated many changes that are having an adverse effect on jobs and consequently our economy.

Congress recently voted to not approve the ambush elections rule that shortened the election timeframes to form a union, a timeframe that was typically only slightly more than a month from beginning to end.

The details in the new rule make it clear that tying up employers in the process and significantly tipping the scale in favor of unions was the apparent objective. This rule requires that unprecedented levels of personal worker information be packaged and presented to organizers seeking to contact workers.

Disclosure of such detailed additional personal information should not be required, especially without strong security safeguards and restrictions on how that data can be used.

The NLRB's decision on micro unions to allow sub-bargaining units to organize independently of the majority workers also counters decades of past policy and presents extraordinary new operational problems in the workplace.

I am sure we want to talk about these issues. I am sure you have things you want to say. Before we go to our witnesses today, I would like to recognize Senator Murray.

STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Mr. Chairman, thank you very much. I, too, want to thank our witnesses from the National Labor Relations Board for taking the time to be with us today. Chairman Pearce, Mr. Griffin, your work is absolutely critical, and I appreciate your service on the Board and your tireless efforts to defend the rights of workers and employers.

I believe that real long term economic growth is built from the middle out, not from the top down, and our government has a role to play in investing in working families, making sure they have the opportunity to work hard and to succeed.

Over the past few decades, working families have seen their incomes stagnate while the cost of living and healthcare and education has continued to go up. Too many families today are struggling to make ends meet on rock bottom wages and poor working conditions, and without collective bargaining rights, many workers have no recourse for improving their workplace.

While the middle class share of America's prosperity is at an all time low, the biggest corporations have posted massive profits. That is just not fair. I believe that our government and our economy and our workplaces should work for all of our families, not just the wealthiest few.

In 1935, Congress understood the need to protect the rights of workers and employers, and to establish the right to collectively bargain. That is why we have the National Labor Relations Act. Congress also understood the need for an agency dedicated to resolving disputes and preventing unfair labor practices. That is why we have the National Labor Relations Board.

Unfortunately recently, some of our Republican colleagues have taken every opportunity they can to lob attacks on the NLRB and

by extension, really attack workers who simply want a voice at the table in the workplace.

I believe partisan attacks on the NLRB are unwarranted, and they are unproductive. When workers want to join a union, they are not looking for special treatment. They are simply trying to exercise a basic right.

When the NLRB examines and adapts the National Labor Relations Act to changing patterns in the labor market or when it makes common sense updates to union election procedures, the Board is simply carrying out its duties under the law.

I hope this hearing does not turn into another attempt to attack workers' rights to organize or criticize the NLRB for carrying out its mission. I do welcome the opportunity today to hear from the NLRB about its budget request and the work the Board is doing to protect American workers and employers.

I support this budget proposal to increase investments in the Board's vital work. With ever changing employment relationships across the country, the Board adjudicates very complex litigation. This budget would help hire a small number of additional staff to continue its important work in investigating, in settling, and deciding its cases.

This budget proposal will help the Board continue to resolve unfair labor practices in a timely manner, and it will help ensure employers and employees have access to a fair election process when workers want to vote on union representation.

We as a Nation should not turn our backs on empowering workers through collective bargaining. That is the very thing that has helped so many of our workers climb into the middle class. It is no coincidence that when union membership was at its peak in the middle of the last century, America's middle class grew strong. Collective bargaining gave workers the power to increase wages.

In fact, from the end of World War II through the mid-1970s, wages rose along side the rise in American productivity. Unions helped workers get the training they needed to build their skills so they could advance on the job.

They helped make sure men and women had safe workplaces. Union support was key to passing the Occupational Safety and Health Act of 1970, and since then, fatalities on the job have sharply declined, and workers have access to healthier working conditions.

Through collective bargaining, access to healthcare rose, and that is still true today. Workers who are a part of a union are nearly 30 percent more likely to be covered by employer provided health insurance.

All of those benefits strengthen economic security for the middle class and for those who are working hard to get there, and more Americans are able to share in the economic prosperity they have earned through hard work.

In Congress, we need to continue to expand economic security for more of our families. That should be our mission to move our country forward. As part of that effort, we have to make sure the NLRB can work efficiently and effectively, and we need to make sure that all families have the chance to share in the economic prosperity of this country, not just the wealthiest few.

Mr. Chairman, I do look forward to this hearing as a way to examine how the NLRB is moving forward toward those goals, and I truly hope we can work together on policies that create jobs and help our workers and families and create a very broad-based economic growth.

Again, I thank our witnesses for being here today, and I look forward to the discussion.

Senator BLUNT. Thank you, Senator Murray. I think we would be pleased to have an opening statement both from Chairman Pearce and Counsel Griffin.

SUMMARY STATEMENT OF MARK GASTON PEARCE

Mr. PEARCE. Thank you. Good morning. Chairman Blunt, Ranking Member Murray, and members of the subcommittee, I am pleased to appear before you today, and thank you for this invitation.

I am privileged to serve as the chairman of the National Labor Relations Board, which will celebrate its 80th anniversary in July of this year. Since the inception in 1935, the National Labor Relations Board has been tasked with enforcing the National Labor Relations Act, the Act born out of the Great Depression has long been a vehicle for employees and employers to resolve workplace disputes.

The agency has never been a place without controversy, as we deal with the challenges workers and businesses face in our Nation's ever changing economy.

Indeed, labor law continues to stir spirited debate in Congress as well as in many State houses. Regardless of political tides, this agency's job under 13 presidents has been to serve as the independent enforcer of our Nation's most fundamental labor laws.

My colleagues at the Board and I take this duty very seriously, and strive to do so in an efficient, responsible fashion. General Counsel Griffin will speak more specifically about the agency's fiscal year 2016 budget request, and the General Counsel's side of the agency, which oversees and employs the vast majority of the staff.

On the Board side, we have 149 FTEs, and the Board's funding allocation represents about 10 percent of the overall agency budget. The Board issued 248 decisions in contested cases last fiscal year. Decisions were issued in 205 unfair labor practice cases and 43 representation cases.

During the first half of the current fiscal year, the Board has issued 202 cases, 79 percent of which were unanimous decisions.

If we continue on this course, we will have one of the most productive years on record. That is not to say there are not issues affecting the agency's case processing. We have experienced many challenges over the prior 2 fiscal years, contentious debates in the Senate over confirmation of Board nominees have resulted in numerous vacancies impacting the Board's ability to process cases.

Faced with the loss of quorum, recess appointments were made to the Board in January of 2012. These appointments were challenged by the Supreme Court in NLRB vs. Noel Canning. On June 26, 2014, the Supreme Court issued its decision in that case. Following that decision, 103 cases were returned to the Board for decision.

For parties involved in these cases, expeditious resolution is critical, and the Board has continued to make great strides to resolve these cases. In my testimony before the House Appropriations Subcommittee on Labor, Health, and Human Services, I expressed the Board's commitment to resolve all of these cases by June 26, 2015, 1 year after the issuance of the Supreme Court decision.

At the time of that hearing, the Board had issued decisions in 73 of those cases with another 27 cases pending and 4 that were otherwise resolved. Since that time, the Board has issued an additional 7 decisions, leaving only 16 cases pending with 7 otherwise resolved.

In addition to resolving the Noel Canning impacted cases, my colleagues and I have also instituted an enhanced alternative dispute resolution process. This process, led by the Office of the Executive Secretary, will help to minimize unnecessary protracted litigation. I am optimistic that this initiative will help improve our agency's efficient case processing.

In addition to its case work, the Board has continued to expand its outreach efforts. We have worked to provide user friendly information to employees and employers via social media outreach and the creation of a free mobile application.

The Board has also issued a final rule amending its representation procedures. The final rule is intended to enable the Board to more effectively administer the National Labor Relations Act. It includes several changes to existing procedures, all designed to reduce inefficiencies, modernize processes, and streamline representation case procedures.

Mr. Chairman, the fiscal year 2016 budget request before you will enable our agency to provide workers and businesses with the effective and efficient case resolution they deserve.

We have an important role to play in the Nation's economy. We need adequate resources to fulfill the responsibility of enforcing the National Labor Relations Act as we have done for 80 years.

Thank you for this opportunity to meet with you, and I look forward to your questions.

[The statement follows:]

PREPARED STATEMENT OF MARK GASTON PEARCE

Chairman Blunt, Ranking Member Murray, and Members of the Subcommittee, I am pleased to appear before you today. Thank you for the invitation. I am privileged to serve as the Chairman of the National Labor Relations Board, which will celebrate its 80th Anniversary in July of this year.

Since its inception in 1935, the National Labor Relations Board has been tasked with enforcing the National Labor Relations Act. The Act, borne out of the Great Depression, has long been a vehicle for employees and employers to resolve workplace disputes. The Agency has never been a place without controversy as we deal with the challenges workers and businesses face in our Nation's ever-changing economy.

Indeed, labor law continues to stir spirited debate, as we have seen play out here in Congress. There has also been vigorous debate of these issues in State houses in recent months. Regardless of political tides, this Agency's job, under 13 Presidents has been to serve as the independent enforcer of one this Nation's most fundamental labor laws.

My Colleagues at the Board and I take this duty very seriously and strive to do so in an efficient, responsible fashion. General Counsel Griffin will speak more specifically about the Agency's fiscal year 2016 budget request, and his side of the agency, which oversees and employs the vast majority of staff. On the Board side,

we have 149 FTEs and the Board's funding allocation represents about 10 percent of the overall Agency budget.

The Board issued 248 decisions in contested cases last fiscal year. Decisions were issued in 205 unfair labor practice cases and 43 representation cases. During the first half of the current fiscal year, the Board has issued decisions in 202 cases, 79 percent of which were unanimous decisions. If we continue on this course, we will have one of our most productive years on record.

That is not to say that there are not issues affecting the Agency's case processing. We have experienced many challenges over the prior 2 fiscal years. Contentious debates in the Senate over confirmation of Board nominees have resulted in numerous vacancies, impacting the Board's ability to process cases. Faced with a loss of quorum, recess appointments were made to the Board on January 4, 2012. These appointments were challenged in the Supreme Court in the case of NLRB v. Noel Canning. On June 26, 2014, the Supreme Court issued its decision in that case. Following that decision, 103 cases were returned to the Board for decision.

I understand that for parties involved in these cases, expeditious resolution is critical, and the Board has continued to make great strides in resolving these cases. In my testimony before the House Appropriations' Subcommittee on Labor, Health, and Human Services, I expressed the Board's commitment to resolving all of these cases by June 26th, 2015, 1 year after the issuance of the Supreme Court Decision. At the time of that hearing, the Board had issued decisions in 73 of those cases with another 27 cases pending and four that were otherwise resolved. Since that time, the Board has issued an additional 7 decisions, leaving only 16 cases pending with seven otherwise resolved.

In addition to resolving the Noel Canning impacted cases, my colleagues and I have also instituted an enhanced alternative dispute resolution process. This process, led by the Office of the Executive Secretary, will help to minimize unnecessary and protracted litigation. I am optimistic that this initiative will help improve our Agency's efficient case processing.

In addition to its casework, the Board has continued to expand its outreach efforts. We have worked to provide user-friendly information to employees and employers via social media outreach and the creation of a free mobile application. These resources help make workers aware of their rights and help employers better understand the protections available under the law.

The Board has also issued a final rule amending its representation case procedures. The final rule is intended to enable the Board to more effectively administer the National Labor Relations Act. It includes several changes to existing procedures, all designed to reduce inefficiencies, modernize processes, and streamline representation case procedures.

Mr. Chairman, the fiscal year 2016 budget request before you will enable our Agency to provide workers and businesses with the efficient and effective case resolution they deserve. We have an important role to play in the Nation's economy, and we need adequate resources to fulfill the responsibility of enforcing the National Labor Relations Act, as we have proudly done for nearly 80 years. Thank you for the opportunity to appear before you today and I look forward to your questions.

Senator BLUNT. Mr. Griffin.

STATEMENT OF RICHARD GRIFFIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

Mr. GRIFFIN. Chairman Blunt, Ranking Member Murray, and members of the Subcommittee, thank you for asking me to appear before you to discuss the agency's fiscal year 2016 budget request.

The National Labor Relations Board is responsible for administering the National Labor Relations Act. The Act ensures the right of private sector workers to organize and bargain collectively with their employers, and to participate in concerted activities to improve their pay and working conditions with or without union representation.

The Office of General Counsel serves as the agency's investigative and prosecutorial branch. I also serve as the agency's chief administrative officer. I have general supervisory authority over the agency's 26 regional and 24 satellite offices, and directly oversee 7

headquarter divisions responsible for case handling, administrative, financial and personnel functions.

I am privileged to work with extremely talented professionals and administrators who ensure that the agency is properly serving the public. They do this through investigating and prosecuting unfair labor practice cases, handling representation elections, and providing support for mission critical functions.

Our fiscal year 2014 statistics illustrate our efforts to fulfill our statutory responsibilities. In excess of 23,000 cases that were filed last fiscal year, 20,415 were unfair labor practices, 72 percent of which were resolved within 120 days of filing. There were also 2,585 representation cases filed.

Unfair labor practice charges are filed by individuals, businesses, and unions. After investigation by the regions, 64.7 percent of unfair labor practice charges, almost two-thirds, were found to be without merit and dismissed or withdrawn. For those meritorious, 93.4 percent, more than 9 out of 10, were settled.

When litigation had to be pursued, 85 percent of our unfair labor practice and compliance cases were on in whole or in part before the Board or an administrative law judge, and 84.6 percent of our cases in the Courts of Appeals were enforced or affirmed in whole or in part.

We recovered over $44 million predominately in back pay on behalf of employees, and secured more than 3,000 offers of reinstatement.

The agency also has the authority to seek temporary injunctions from the Federal District Courts to ensure that the traditional NLRB remedies do not come too late to repair the damage done by unfair labor practices. Last fiscal year, the Board authorized my office to seek injunctive relief in 38 cases, and all these cases that ended up having to be litigated were won in whole or in part.

The agency's successful resolution of disputes between employers, unions, and employees implements our congressional mandate to promote industrial peace. In this regard, the efficient resolution of workplace disputes saves all parties from expending significant time and resources in debilitating industrial conflict.

Success in resolving industrial disputes is completely dependent upon maintaining adequate staffing, training that staff, engaging in appropriate succession planning, investing in long term information technology solutions, and addressing all other operating costs, including case related travel.

About 80 percent of our proposed budget is dedicated to personnel compensation and about 10 percent is required for rent and security. More than half of the remaining amount is committed to crucial technological improvements to the agency's public website and case handling IT programs.

The National Labor Relations Board plays a critical role in ensuring that workplace disputes are resolved efficiently and effectively. There is no private right of action under the National Labor Relations Act, and thus, workers, employers, and labor unions depend on the agency to resolve their issues.

Without sufficient funding, both workers and employers stand to lose. Employees unlawfully fired for joining together to get better

wages and working conditions will lose, employers subject to jurisdictional disputes or unlawful picketing will lose.

I assure you that in fiscal year 2016, the agency will continue to execute our congressional mandate in a fair and timely manner. The agency's budget request will help us to carry out our important statutory mission.

Mr. Chairman, thank you again for inviting me today. I look forward to working with you, and am happy to respond to any questions that you or other members of the committee may have.

[The statement follows:]

PREPARED STATEMENT OF RICHARD F. GRIFFIN, JR.

Chairman Blunt, Ranking Member Murray, and Members of the Subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to appear before you to discuss the Agency's fiscal year 2016 budget request.

The National Labor Relations Board (NLRB/Agency) is responsible for administering the National Labor Relations Act (NLRA/Act), which ensures the right of private-sector workers to organize and bargain collectively with their employers and to participate in concerted activities to improve their pay and working conditions with or without union representation.

As General Counsel, my Office serves as the investigative and prosecutorial branch of the Agency as well as the Agency's chief administrative officer. In that capacity, I have general supervisory authority over the Agency's 26 regional and 24 satellite offices located throughout the country (Field offices). In addition, my Office directly oversees seven Headquarters divisions, which are tasked with various case handling, administrative, financial and personnel functions.

The Agency has taken a number of proactive steps to ensure that we are serving the public in the most effective and fair manner possible. To that end, the Agency continues to proactively analyze its workload, technology requirements, and human capital in order to take appropriate steps to restructure, consolidate and otherwise streamline operations. To ensure that our national footprint meets the needs of the public within budgetary constraints, we consolidated six Regional offices and closed one Resident office within the past 2½ years. We will continue to regularly assess these operations in fiscal year 2016 and beyond. Similarly, in Headquarters, within the same timeframe, we developed a Compliance Unit to better assist Regions with obtaining remedies for statutory violations and created a Division of Legal Counsel, which enhanced our handling of legal and government ethics issues. The creation of the Division of Legal Counsel has also centralized the handling all FOIA requests and appeals through the FOIA Branch enabling more than 1050 Field office staff members to focus primarily on case handling matters.

Our below-referenced fiscal year 2014 statistics illustrate our dedicated efforts to meet our statutory responsibilities.

The Agency's case intake was in excess of 23,000 cases. Of those 20,415 were unfair labor practice cases, and 72.3 percent of which were resolved within 120 days of filing. 2,585 representation cases were filed.

Unfair labor practice charges are filed by individuals, businesses, and unions. After investigation by the Regions, 64.7 percent of unfair labor practice charges filed were found to be without merit. For those deemed meritorious, 93.4 percent were settled without litigation. When litigation had to be pursued, 85 percent of our unfair labor practice and compliance cases were won, in whole or in part, before the Board or an Administrative Law Judge, and 84.6 percent of our cases in the Court of Appeals were enforced or affirmed, in whole or in part.

As for remedies, last fiscal year the Agency recovered on behalf of employees over $44 million, predominantly in back pay, and secured offers of reinstatement for more than 3,000 workers.

In cases where traditional NLRB remedies might come too late to repair the damage done by unfair labor practices, the Agency strives to ensure that appropriate remedies are expeditiously sought using Section 10(j) of the Act. This authorizes the NLRB to seek temporary injunctions against employers and unions in Federal district courts to stop unfair labor practices while the case is being litigated before administrative law judges and the Board. These temporary injunctions are needed to protect the process of collective bargaining and employee rights under the Act. In fiscal year 2014, the Board authorized my Office to seek injunctive relief in 38 cases and all such cases that were litigated in district court during that fiscal year were won, in whole or in part.

The Agency has been trusted with promoting industrial peace and our ability to successfully help resolve disputes between employers, unions, and employees in private sector workplaces is paramount to fulfilling that responsibility. In this regard, the efficient resolution of workplace disputes saves employers, unions, and workers—American taxpayers—from expending significant time, resources, and funds in debilitating industrial conflict.

The Agency's success in this area is completely dependent upon our ability to maintain adequate staffing levels, to sufficiently train our staff, to engage in appropriate succession planning in light of the expected loss of a significant number of our retirement-eligible employees, to invest in long-term Information Technology (IT) solutions, and to address all other operating costs, including case-related travel.

Most of our proposed budget—about 80 percent—is dedicated to personnel compensation. Further, about 10 percent is required for rent and security. As a result, only about 10 percent of the Agency's overall budget is available to cover the rest of the Agency's necessary activities. More than half of that remaining amount is committed to support necessary technological improvements to the Agency's public website and case handling programs. These expenditures are particularly crucial now that the Agency has moved to a system where the electronic case file —maintained in an internal computer system called NxGen— is the official case file. Additional funds sustain educational and outreach efforts aimed at providing guidance to business owners and human resource professionals, as well as workers, about our statute. These outreach efforts include the issuance of public memoranda discussing appropriate handbook rules and policies in response to the business community's desire for guidance in this area, including a comprehensive guidance memorandum that was issued in March.

In addition, the Agency works to leverage resources. We have executed letters of agreement with Mexico, Ecuador, and the Philippines designed to strengthen collaborative efforts to provide foreign business owners doing business in the United States, as well as workers from those countries, with education, guidance and access to information regarding their rights and responsibilities under our statute. I believe that the costs associated with this outreach will pay dividends as employers will able to avoid unintentionally violating our statute and workers will be educated about their statutory rights to engage with one another to improve their conditions of employment, both of which benefits taxpayers, and the country as a whole, through increased economic growth.

The National Labor Relations Board plays a critical role in ensuring that workplace disputes are resolved efficiently and effectively. As there is no private right of action under the National Labor Relations Act, workers, employers, and labor unions depend on the Agency to resolve their issues effectively and efficiently. Without sufficient funding, both workers and employers stand to lose. I assure you that, in fiscal year 2016, the Agency will continue to ensure that our Congressional mandate is executed, and in a fair, timely and quality manner. The Agency's budget request will help us to carry out this important statutory mission.

Mr. Chairman, thank you again for inviting me today. I look forward to working with you and am happy to respond to any questions that you may have.

JOINT EMPLOYER STANDARD

Senator BLUNT. Thank you, Mr. Griffin. Thank you, Chairman Pearce. Let's talk, Mr. Griffin, first about what appears to be a new view while it is not in a rule yet or maybe not even adopted yet, but that we appear to be headed toward adopting a new way to look at the franchise model. It is not a model that is unique in our country, but certainly it is a model in our country that has been used to move lots of people economically forward.

Your idea that you can no longer—I believe this is what our opinion says—you should no longer distinguish between direct and indirect control of employees.

I just do not understand how that fits in with what I understand this model to be. Who hires people, who provides the benefits for people, who borrows the money to build the building, who has the liability. It appears to me to be the employer that NLRB has always viewed as the employer.

What kind of confusion does it bring to the system, whether it is a hotel chain or any other franchise operation, when you suddenly are dealing with not only the person who hires the people and monitors them and pays them, but the entity that creates the sign that goes on the building?

Mr. GRIFFIN. Thank you very much for the opportunity to address this because it has been the subject of quite a bit of controversy, and it is important, I think, that my views are clear. I have responded to a number of congressional oversight requests on this question, and I would be happy to provide copies of those responses to you as well.

[The information follows:]

LETTERS SUBMITTED BY NATIONAL LABOR RELATIONS BOARD TO CONGRESS

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 4, 2014

The Honorable John Kline
Chairman, Education and the Workforce Committee
The Honorable Phil Roe, M.D.
Chairman, Subcommittee on Health, Education, Labor, and Pensions
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

I write in response to your letter dated September 16, 2014, wherein you request certain information and documents to better inform the Committee about the joint-employer test under the National Labor Relations Act (NLRA).

Your letter references our recent filing of an amicus brief in *Browning-Ferris Industries* regarding the joint-employer standard, as well as our recent authorization to issue complaints against McDonald's USA, LLC and McDonald's franchisees as joint-employers. Specifically, you seek the following:

1) A list of all open complaints in which joint-employer status is an issue;
2) Any documents and communications related to closed complaints in which joint-employer status was an issue; and
3) A thorough description of the current joint-employer test the General Counsel's office is applying, particularly regarding its application to franchises.

In response to your first inquiry, I am enclosing the list of open complaints in which joint-employer status is an issue. The same list was provided to your staff on October 15, 2014.

Regarding your second request, I am enclosing a list of closed complaints in which joint-employer status was an issue. This information was provided to your staff on October 28, 2014. The Office of the Chief Information Officer is now engaged in identifying the universe of responsive documents and communications related to those closed cases. Once it has concluded its efforts in that regard, we will be able to more fully respond to this request.

As to your final inquiry, the Board's recent decision in *CNN News Network and Team Video Services, LLC,* 361 NLRB No. 47 (2014), details the current joint-employer standard. That is the current joint-employer standard that the Office of the General Counsel continues to apply to all, including franchises.

As you note in your letter, on May 12, 2014, the National Labor Relations Board (Board) issued a notice and invitation to file briefs in *Browning-Ferris Industries*, seeking briefing on various joint-employer issues. Among the questions on which the Board's notice sought input was whether the Board should adhere to its existing joint-employer standard or adopt a new standard. In response to the Board's notice, the Office of the General Counsel filed an amicus brief, a copy of which is attached for your reference. The brief is the best statement of the Office of the General Counsel's view of what the Board's joint-employer standard should be.

I conclude with the following comments. First, there are no open cases where the General Counsel's office is alleging that an entity is a joint-employer solely under the test that the *Browning-Ferris Industries* amicus brief urges the Board to adopt. Secondly, it is not unprecedented for the Office of the General Counsel to pursue complaints against franchisors and franchisees as joint employers. See, for example, *Love's Barbeque Restaurant,* 245 NLRB 78 (1978). Lastly, I note that, as stated in our amicus brief in *Browning-Ferris Industries*, my office is not seeking to have the Board overturn the line of cases that stand for the proposition that, where franchisors' indirect control over employee working conditions is merely related to the franchisors' legitimate interest in protecting the quality of their brand or product, such indirect control is insufficient to make the franchisors joint employers with their franchisees.

I trust this letter responds to the concerns you raised in your inquiry. We will continue to work to provide you with the documents and communications you requested. I am committed to working with the Committee to accommodate its oversight needs. If you have additional questions, please do not hesitate to contact Celine McNicholas, Director of the Office of Congressional and Public Affairs.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

Enclosure

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 10, 2014

The Honorable John Barrasso
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Barrasso:

I write in response to your letter dated September 25, 2014, wherein you request that I make public supporting reasoning for the Office of the General Counsel's decision to authorize complaints against McDonald's USA, LLC and McDonald's franchisees as joint-employers.

The National Labor Relations Board's (Board) recent decision in *CNN News Network and Team Video Services, LLC, 361 NLRB No. 47 (2014),* details the current joint-employer standard. That is the current joint-employer standard that the Office of the General Counsel continues to apply to all, including franchises.

On May 12, 2014, the Board issued a notice and invitation to file briefs in *Browning-Ferris Industries*, seeking briefing on various joint-employer issues. Among the questions on which the Board's notice sought input was whether the Board should adhere to its existing joint-employer standard or adopt a new standard. In response to the Board's notice, the Office of the General Counsel filed an amicus brief, which is available to the public on the Agency's website. I am also attaching a copy of the amicus brief for your reference. The brief is the best statement of the Office of the General Counsel's view of what the Board's joint-employer standard should be.

As you know, the McDonald's matters are open enforcement actions in which the Office of the General Counsel has alleged that McDonald's USA, LLC and McDonald's franchisees violated the National Labor Relations Act. If parties are unable to reach settlement, complaint will issue and these cases will be heard before an Administrative Law Judge. During that hearing, McDonald's USA, LLC and franchisees will have ample opportunity to review and challenge the evidence and legal theories proffered by counsel for the General Counsel, and to present evidence and legal arguments in its defense. Throughout this proceeding, all parties will be afforded due process protections and a right to a fair trial.

We appreciate your need for information in the performance of your oversight responsibilities and I am committed to working with Congress to accommodate its oversight needs. At the same time, I have an obligation as General Counsel to protect the integrity of this process and the rights of the parties involved. Your letter broadly seeks confidential and privileged information. I am happy to meet with you to discuss how we might accommodate further information requests you may have, consistent with my responsibility to protect the integrity of the Agency's legal processes. If you have additional questions, please do not hesitate to contact Celine McNicholas, Director of the Office of Congressional and Public Affairs.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

Enclosure

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 10, 2014

The Honorable Robert Aderholt
United States House of Representatives
2369 Rayburn House Office Building
Washington, DC 20515

Dear Representative Aderholt:

I write in response to your letter dated October 27, 2014, wherein you request that I make public supporting reasoning for the Office of the General Counsel's decision to authorize complaints against McDonald's USA, LLC and McDonald's franchisees as joint-employers.

The National Labor Relations Board's (Board) recent decision in *CNN News Network and Team Video Services, LLC, 361 NLRB No. 47 (2014),* details the current joint-employer standard. That is the current joint-employer standard that the Office of the General Counsel continues to apply to all, including franchises.

On May 12, 2014, the Board issued a notice and invitation to file briefs in *Browning-Ferris Industries*, seeking briefing on various joint-employer issues. Among the questions on which the Board's notice sought input was whether the Board should adhere to its existing joint-employer standard or adopt a new standard. In response to the Board's notice, the Office of the General Counsel filed an amicus brief, which is available to the public on the Agency's website. I am also attaching a copy of the amicus brief for your reference. The brief is the best statement of the Office of the General Counsel's view of what the Board's joint-employer standard should be.

As you know, the McDonald's matters are open enforcement actions in which the Office of the General Counsel has alleged that McDonald's USA, LLC and McDonald's franchisees violated the National Labor Relations Act. If parties are unable to reach settlement, complaint will issue and these cases will be heard before an Administrative Law Judge. During that hearing, McDonald's USA, LLC and franchisees will have ample opportunity to review and challenge the evidence and legal theories proffered by counsel for the General Counsel, and to present evidence and legal arguments in its defense. Throughout this proceeding, all parties will be afforded due process protections and a right to a fair trial.

We appreciate your need for information in the performance of your oversight responsibilities and I am committed to working with Congress to accommodate its oversight needs. At the same time, I have an obligation as General Counsel to protect the integrity of this process and the rights of the parties involved. Your letter broadly seeks confidential and privileged information. I am happy to meet with you to discuss how we might accommodate further information requests you may have, consistent with my responsibility to protect the integrity of the Agency's legal processes. If you have additional questions, please do not hesitate to contact Celine McNicholas, Director of the Office of Congressional and Public Affairs.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

Enclosure

United States Government

NATIONAL LABOR RELATIONS BOARD

Washington, D. C. 20570

March 19, 2015

Dear Chairman Alexander, Chairman Johnson, and Chairman Kline:

This letter serves as my response to your March 5, 2015 correspondence concerning comments that I made about pursuing labor law violations against franchisors as joint employers under the National Labor Relations Act (the Act). In that communication, you questioned my pursuit of these violations because of a purported admission that the legal grounds for doing so are flawed. Specifically, you reference statements that I made at a West Virginia University College of Law conference held on October 24, 2014. In this regard, your request seeks the following information:

1) Did any developments occur in the law between your comments on October 24, 2014 and the filing of complaints on December 19, 2014 that named a franchisor as a joint employer?
    a. If not, please explain your comments made at the October 24, 2014 labor conference.
2) Produce all documents and communications between the Office of the General Counsel and the Board referring or relating to the joint-employer standard from November 4, 2013 to present.
3) Produce all documents and communications between the Office of the General Counsel and any other federal agency about the joint-employer standard from November 4, 2013 to present.

In response to your first question, there were no doctrinal legal developments between October 24, 2014 and December 19, 2014 that were relevant to the determination to issue complaints on December 14, 2014 naming a franchisor – McDonald's USA, LLC – as a joint employer.

As to question 1(a), I note that my October 24, 2014 remarks were similar to remarks I have made on the joint-employer issue on a number of occasions since becoming General Counsel. Specifically, during my tenure, I have engaged in significant efforts to accommodate as many institutional and organizational group requests asking me to address their respective members on a variety of topics, including recent case developments. For example, I accepted invitations to

address the U.S. Chamber of Commerce's Labor Relations Committee, various American Bar Association groups, and a variety of educational institutions in addition to West Virginia University College of Law.

Generally, at these speaking engagements, I advise the attendees of certain cases in which my Office is involved. One of the topics that I typically address is the National Labor Relations Board's (Board's) joint-employer standard. As you might expect, this topic has been of interest to many because, on May 10, 2014, the Board sought briefing in the *Browning-Ferris Industries* case, about whether it should maintain its current joint-employer standard or adopt a different standard and, if the latter, what that standard should be. On June 26, 2014, my Office filed an amicus brief in that pending matter. I have attached a copy of the brief for your reference.

In sum, the General Counsel's brief argues that the Board should return to its traditional joint-employer standard, applied with court approval from the inception of the Act in 1935 until 1984. In a section of the brief contending that the Board's current joint-employer standard inhibits meaningful collective bargaining, the brief describes changes in the American workplace and uses several examples, including growth in the contingent or temporary workforce and changes in the nature of some franchisor-franchisee relationships.

It is here – in the brief's discussion of franchisor-franchisee relationships – that the issue (or "problem") addressed in my October 24, 2014 remarks arises. There are cases from the pre-1984 period during which the Board applied its traditional joint-employer standard – the standard the General Counsel is urging the Board to return to in the *Browning-Ferris Industries* brief – in which prior General Counsels alleged that franchisors and franchisees were joint employers. In those older cases, notably *Love's Barbeque Restaurant*, 245 NLRB 78 (1979), the Board determined that franchisors were not joint employers where their indirect control over employee working conditions was related to their legitimate interest in protecting the quality of their product or brand. The question then is: in light of the *Love's Barbeque Restaurant* line of cases, how can the General Counsel urge the return to the traditional joint-employer standard and still allege, under that traditional standard, that a franchisor is a joint employer with its franchisee?

As I indicated in my remarks on October 24, 2014, the Office of the General Counsel's answer to this question, as put forward in the *Browning-Ferris Industries* brief, is not that the *Love's Barbeque Restaurant* line of cases should be overturned. In fact, the brief is very clear, stating, in footnote 32 on pages 15-16, "The Board should continue to exempt franchisors from joint-employer status to the extent that their indirect control over employee working conditions is related to their legitimate interest in protecting the quality of their product or brand," and citing *Love's Barbeque Restaurant*. Rather, only where the franchisor's involvement in employee working conditions goes beyond that necessary to protect the quality of the brand or product does the *Browning Ferris Industries* brief contend that such involvement may give rise to joint-employer status for the franchisor. Under these circumstances, the *Love's Barbeque Restaurant* line of cases is distinguishable.

Turning to the significance of this for the complaints in the McDonald's cases, as those cases are currently in litigation, it is inappropriate for me to discuss any further details concerning them. However, as I advised Chairman Kline in my November 4, 2014 letter to him and Chairman Roe in response to their joint September 16, 2014 inquiry concerning the joint-employer test, "there are no open cases where the General Counsel's office is alleging that an entity is a joint employer solely under the test that the *Browning-Ferris Industries* amicus brief urges the Board to adopt." That statement remains true today, and, specifically, that is the case in the McDonald's matters. In cases involving putative joint employers, where authorized (and this includes the McDonald's cases), counsel for the General Counsel will be contending that facts are present sufficient to make out joint-employer status under the Board's current test (most recently described by the Board in *CNN News Network and Team Video Services, LLC*, 361 NLRB No. 47 (2014)), and, in the alternative, urging that joint-employer status can be made out under the joint-employer standard urged by the General Counsel in the *Browning-Ferris Industries* amicus brief.

In response to your second inquiry, I again reference the attached amicus brief filed by my Office in response to the Board's May 10, 2014 invitation for briefs in the *Browning-Ferris Industries* case. This brief, submitted to the Board, communicates the Office of the General Counsel's views related to the joint-employer standard. I have instructed my staff to continue to work to provide you with any other documents and communications related to your request. I expect that this information will include any pleadings or other documents submitted to the Board involving cases where the General Counsel is contending a joint-employer relationship exists and/or enforcement actions initiated at the behest of or on the explicit authorization of the Board, as the Board's attorney. See, our June 3, 2014 Guidelines Memorandum, which is also attached for your reference.

Similarly, as to your third inquiry, I have instructed my staff to work to provide you with any documents and communications related to your request to the extent any exist.

Finally, as you know, I have responded to previous requests for documents and communications relating to the joint-employer standard involving closed cases. I felt comfortable providing that information because it related to closed cases where parties were no longer engaged in active litigation. However, to the extent that requested information goes beyond documents officially filed in open unfair labor practice cases involving ongoing litigation and covers internal deliberative documents and communications, I believe that disclosures in those latter matters would compromise the integrity of our administrative processes. As General Counsel, it is my responsibility to ensure that all parties are afforded due process protections in fair and unimpeded administrative proceedings. I remain committed to safeguarding the public's interest in this regard.

In conclusion, I trust that I have been fully responsive to your inquiries and have demonstrated my respect for your legitimate oversight functions. If you have any additional questions, please

do not hesitate to contact Celine McNicholas, Director of the Office of Congressional and Public Affairs.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

Mr. GRIFFIN. Essentially what we are looking at in the joint employer situation is whether or not more than one entity is going to be responsible for terms and conditions of employment with respect to a group of employees.

There is a case where the Board has requested briefing on the subject of whether or not it should abide by its current joint employer standard or whether it should seek to change that joint employer standard, and the case is called Browning-Ferris, and it is still pending before the Board.

In that case, my office filed an Amicus Brief, and what we suggested was that the Board, in light of the changing realities in the workplace, in light of the rise of a contingent workforce, and in light of changes in certain franchisor/franchisee situations, to the nature of some franchise relationships, the Board ought to return to the standard that it had from 1935 to 1984, what we characterize as the traditional joint employer standard.

That standard looked at a number of factors, both direct impacts on employment and indirect impacts on employment, on terms and conditions of employment. It looked at actual and it looked at potential impacts. There was a case, for example, where one entity had the ability pursuant to a contract to determine the wages of the second entity. It had not actually done it yet, but it had the potential absolute control over wages.

Under the old standard, both indirect and direct impacts were looked at, both actual and potential impacts were looked at. That is what we suggest the Board ought to return to in Browning-Ferris.

Senator BLUNT. Why did the Board change the standard 30 years ago?

Mr. GRIFFIN. Well, it is a good question because the Board did not articulate that it was changing the standard. In two cases, TLI and Laerco, the Board, without announcing that it was changing the standard and without seeking briefing on whether it should change the standard, and without acknowledging it was changing the standard, the Board looked to certain direct impacts which were impacts that it had previously examined, and ratcheted up the standard to require those to be the bare minimum for finding joint employer status.

Specifically with respect to franchises, and this is something I want to be absolutely clear about, our brief in Browning-Ferris acknowledges that there are a line of cases, Board cases, decided under the old standard, under the standard that we are asking the Board to return to, where the Board said if what the franchisor is trying to do is maintain the uniformity of its brand or product, and as a result of that effort, has an indirect impact on certain terms and conditions of employment, that indirect impact will be insufficient to make the franchisor a joint employer.

We specifically say in the Browning-Ferris brief we are not seeking to overturn those cases, but where the franchisor exerts more control, where the franchisor pursuant to the current technologies available that allows franchisors to have real time information about what is going on at every franchisee location and insert themselves more into the determination of terms and conditions of employment, in those situations, we would say if the facts are dem-

onstrated in a particular case, the franchisor may be a joint employer.

In the McDonald's cases, which are currently being litigated, there is an allegation that McDonald's Corporate is a joint employer with franchisees. However, in the McDonald's cases, we are proceeding under the current Board's standard, and we believe we can demonstrate facts that will make out joint employer status under the current standard.

We are also arguing in the alternative should the Board adopt the standard we advocate for in Browning-Ferris that that standard would certainly mean joint employer status for McDonald's as well.

Just this week, we published on our website in a case called Nutritionality, which involves a franchisor/franchisee relationship for a product known as Freshii. There are about 100 of these around the world.

The advice memo said applying either the current standard or the prior standard, the Freshii relationship was not sufficient to make——

Senator BLUNT. Unless someone else gets there, I want to come back to this. I do not want to take all the time.

One question I want to ask is are you doing what you think the Board did in 1984, which is not going through an open public comment rulemaking process but just having an opinion from you as to what the Board should do moving forward.

We will come back to that. Senator Murray.

CASE REPRESENTATION ELECTION PROCESS RULE

Senator MURRAY. Thank you very much. Chairman Pearce, there has been a lot of rhetoric about the new streamlining elections. I have heard it called an ambush or solution in search of a problem. I actually disagree with that. I think workers should have access to free and fair elections when they decide on union representation, and in order to do that, we have to reduce the needless delays and obstacles that have interfered with the election process.

Could you explain to us why it was so important for the Board to consider changes to the process? What was wrong with the existing system?

Mr. PEARCE. Thank you, Senator Murray, for giving me the opportunity to talk about that. The responsibility of the Board is to make the election process and the procedures that go along with it to be as effective and efficient as possible.

The Board has always provided procedures for the election process, not all these procedures were subject to notice and comment because these were all administratively handled, which we were allowed to do.

We have done tweaks to the procedures over time in more of a patchwork fashion. These procedures, in order for us to be able to streamline, provide sensitivity towards the modernization that exists now in current technology, and uniformity, so that people can experience the same procedures whether they file a petition in California or New York or in Texas, and a transparency so that all the stakeholders have an understanding as to what is going on.

We felt it was necessary to provide a reformation of those rules, and that is what we did. Of course, we did this after much notice and comment, full transparency. We had public hearings. We had thousands of commentary that we reviewed and the like, so that we could make an informed decision.

I think we achieved that goal. We have something that has been modified to provide a streamlined modernized uniform and transparent set of rules.

Senator MURRAY. With regard to the word "ambush," I understand that employers are actually free to talk the subject of unions with employees well before an election petition is filed; is that correct?

Mr. PEARCE. That is correct. Nothing in terms of the communications between employers and employees has been altered by these rules.

Senator MURRAY. Mr. Griffin, I wanted to follow up on the chairman's questions about the joint employer status. Your decision to issue labor violations against McDonald's as a joint employer with franchises, which he asked you about, in February we actually had a hearing in the Health Committee on this.

CHANGES IN THE LABOR MARKET

I want to highlight a little bit why this decision is so important to working families and low wage workers. Can you explain the ways the labor market has changed over the last 30 years that made this decision so important?

Mr. GRIFFIN. As we expressed in the Browning-Ferris brief and a number of the other Amicus Briefs filed in the Browning-Ferris case pointed out, there has been an exponential rise in what is called the contingent workforce, where aspects of the employment relationship, which used to be held entirely by one employer, have been separated between a number of entities.

There are temporary agencies that provide workers. There are payroll agencies that carry people who work for someone else and fulfill all the payroll functions.

That is one substantial change, and it alters the nature of the employment relationship where you are paid and all your benefits come through one entity but you are directed in the workplace by another entity.

Senator MURRAY. Directed including what you can wear, what hours you work, what policies you have to follow?

Mr. GRIFFIN. Correct, and how you will fulfill your employment functions, what hours you show up, and things like that.

Similarly, with respect to the franchise relationship, you have situations where there are now computer programs that allow franchisors to maintain real time information about not just gross sales but also how many people are working, what their hours are, and to direct if the relationship between the labor costs and the gross sales reach a point that they do not like, for people to go home even though they may be scheduled otherwise for a full shift.

There are a number of changes to the workplace that call for a reviewing doctrine to make sure that it is still relevant and we still fulfill our function to promote the practice and procedure of collective bargaining.

Senator MURRAY. Thank you. Thank you very much, Mr. Chairman.

STATE RIGHT TO WORK LAWS

Senator BLUNT. Mr. Alexander.

Senator ALEXANDER. Thanks, Mr. Chairman. Mr. Pearce and Mr. Griffin, welcome, good to see you. Mr. Pearce, you said it was the duty of the NLRB to enforce fundamental labor law. Would you agree Section 14(b) of the Taft-Hartley Act is a part of that fundamental labor law?

Mr. PEARCE. Yes.

Senator ALEXANDER. That gives States the right to pass a so-called right to work law, which 25 States, I believe, have done, right?

Mr. PEARCE. That is right.

Senator ALEXANDER. Tennessee is one of those States. The Tennessee law says two things. One is you do not have to join a union in order to hold a job. Does that sound like a correct law authorized by the NLRA?

Mr. PEARCE. I believe so; yes.

Senator ALEXANDER. It also says you do not have to pay dues or fees to the union in order to have a job. Does that sound like a right to work law authorized by the National Labor Relations Board?

Mr. PEARCE. It sounds like a right to work law that by statute a State is permitted to have; certainly.

Senator ALEXANDER. Thank you. There is a section of the National Labor Relations Act, 8(b)(1)(A), which the Supreme Court said in 1967 requires a union to serve the interests of all of the members of the bargaining unit, all the employees, whether or not they belong to the union.

The NLRB in 1976 said a union cannot lawfully refuse to process a grievance of an employee in the union because he is not a member. In a non-right to work State, you can be fired if you try to assert those rights.

What I am trying to understand is why the Board in April of this year requested legal briefs in an appeal of a case in Florida that asks these questions, in effect, whether unions in a right to work State like Tennessee can force employees who do not belong to the union to pay fees or other dues' like charges, and the legal briefs are to be about whether you can charge those non-union members fees, how much you can be allowed to charge, and what actions a union could take to make sure it gets paid.

Why would you ask those questions when the law has been settled for 40 years, that a State may pass a law like the ones I read to you in Tennessee that says you cannot do that?

Mr. PEARCE. The case that is before us is one that I could not comment specifically on because it is pending.

Senator ALEXANDER. I am not asking you to do that.

Mr. PEARCE. I understand.

Senator ALEXANDER. If the laws that Tennessee has, for example, that you do not have to join a union, you do not have to pay fees, and the Supreme Court and the NLRB have said the union has to

serve everybody who works at the plant, then why do you ask the question how much of a fee could they charge?

Mr. PEARCE. The issue presented in the case is whether a union can charge a fee for processing grievances of non-members.

Senator ALEXANDER. That is exactly right. That is what I read to you. The Supreme Court in 1967 and the NLRB in 1976 says that a union cannot lawfully refuse to process a grievance of an employee in the union because he is a non-member period. That is the law.

Mr. PEARCE. I agree.

Senator ALEXANDER. Why would you ask how much of a fee could the union charge?

Mr. PEARCE. The Board is soliciting briefs on the question of whether or not a fee can be charged for the processing of a grievance.

Senator ALEXANDER. But the Board has already held that a fee cannot be charged, and the Supreme Court has held the same thing. Why would you change the law?

Mr. PEARCE. I respectfully disagree. I think——

Senator ALEXANDER. Your opinion said in 1976 "A union cannot lawfully refuse to process a grievance of an employee in the union because he is a non-member." Unquote.

Mr. PEARCE. That is right.

Senator ALEXANDER. Why would you ask for a brief on that question of how much the fee could be and what the union could do if the employee does not pay it?

Mr. PEARCE. The question that is asked for briefing is whether or not—it is not a question of whether or not a union can refuse to process a grievance of a non-member, because I think that is a matter well settled, as you pointed out.

The question is whether or not it would be lawful or permissible for a union to charge a fee for the processing of a grievance, because of the administrative costs involved in processing a grievance, particularly where non-members are not obligated to pay dues.

Senator ALEXANDER. It seems to me, Mr. Chairman, and my time is up, that is undermining the right to work law, and there is talk often about the middle class. I cannot think of anything more damaging to middle income Tennesseans than anything that would undermine the right to work law.

I have seen over the last 30 years how it has attracted the auto industry to our State, created a competitive industry, good jobs, helps families. The reason they came was because we had a different labor environment, because we had the right to create a right to work law, and I am very concerned that just these requests for briefs on law that has been settled for 40 years suggests to me the Board is thinking about undermining a State like Tennessee's ability to have a right to work law.

Thank you, Mr. Chairman.

Senator BLUNT. Mr. Lankford.

PROTECTION OF PERSONAL INFORMATION UNDER NEW ELECTION PROCESS RULE

Senator LANKFORD. Thank you, Mr. Chairman. Gentlemen, thank you for being here. I want to ask about the rule change from April 14, which shortens the length of days on union certification but it also allows access to personal information of the workers.

My question is what processes or regulations have been put into place to help protect workers who do not want their personal information, their e-mail, their cell phone numbers, their home addresses, their shift times, shared with any outside organizations? Has there been a process or regulation put into place for workers who do not want that information shared?

Mr. PEARCE. Thank you, Senator Lankford, for giving me an opportunity to address that question. It should be known that the Supreme Court has set forth, and this is 50 years' worth of law—has required employers to supply the names and addresses of employees in the bargaining unit to the union that has filed the petition in advance of the election.

That is supported by the Supreme Court. What this does is take into consideration modern technology where e-mail addresses are the most common mode of communication, and those and cell phone numbers where available to the employer.

Senator LANKFORD. Are there any regulations intact that when that information is shared, e-mails, shift times, cell phone numbers, from any entity that gets that outside, what they do with that information, how it is distributed, how it is collected, how it is managed, the security of that information? It is pretty private information.

Mr. PEARCE. I understand that it is very private information. This information is being supplied to a party to an election process. That is the party that is entitled to it under these rules.

Senator LANKFORD. Correct, but what do they do with it? What limitations do they have with that information? Are there any regulations on them, what they do with that information?

Mr. PEARCE. If they abuse the use of that information, unfair labor practice charges can be filed against them. Objections to elections can result.

Senator LANKFORD. Could they sell that information, could they distribute it to another union outside of their community? Could they distribute it to other like-minded individuals or outside groups?

Mr. PEARCE. There has not been any documented cases where I have seen——

Senator LANKFORD. Could they? Is there a limitation on that, on sharing their personal information with another group?

Mr. PEARCE. The limitation that we have placed on them is the abuse of that information would be a basis for unfair labor practices or objections.

Senator LANKFORD. I am not talking about abuse of the information. I am talking about sharing that information. They now collect private information of individuals.

If the local job training program came and said we want the shift times and the private information because we want to do vocational training for people here, they could not get that information.

If the local fire department walked in and said they wanted that information, they could not get that. If the FBI walked in and said they wanted that information, they would have to get a subpoena to get that information.

This information is shared, and I cannot seem to find a regulation that then restricts how that group that gets it then manages that information. That is the question I want to ask.

Mr. PEARCE. The rule specifically deals with that information being used solely for the purposes of the election.

Senator LANKFORD. I would be interested to know how that is managed because that is a potential that is sitting out there for individuals' private information, for individuals that do not want to share that information.

JOINT EMPLOYER STANDARD

I do have some very serious concerns on the shift and the franchise rules as well, because of the way the definition is sitting out there, Mr. Griffin.

In your brief, you made the statement that your concern was it inhibits meaningful collective bargaining. I believe the term was "direct, indirect or potential control over workers."

The potential control over workers has a tremendous broad definition that this particular Board may have an understanding of, but 10 years from now, 15 years from now, what does the potential control over workers—how far does this go to broaden this definition?

We have hundreds of thousands literally of franchisors around the country. I have a couple of issues here. One is has there been any study of what happens with a significant change in our economy with a significant change in the franchise rule? Has there been any evaluation of the economic impact of that?

I am interested in this comment about the workforce has changed significantly in the past several decades, so we need to return to a rule that we set aside 30 years ago, because there has been so much progress and change, we need to do something we used to do a long time ago.

Those two do not seem to jive to me.

Mr. GRIFFIN. Thank you very much, Senator, for asking on this. A couple of points. The first is it has always been the case regardless of whether it is the current standard or the prior standard that the Board looks at a number of factors in making this determination, and in each instance, it is a very fact bound determination.

What we are suggesting is a return to a standard, and incidentally, the EEOC filed a brief arguing this standard also be adopted because it is the standard that is applied in EEOC cases currently, so the EEOC made the point that the Board law and essentially all the labor enforcement law ought to operate on the same joint employer standard.

What we would be arguing for in conjunction with the EEOC is looking at additional factors, and again, on a fact bound individualized basis if there was sufficient demonstration that the punitive

joint employer had sufficient involvement, including examining indirect involvement examining potential involvement, that meaningful collective bargaining could not take place without them present at the table, then they should be held to be a joint employer. It is always going to be a fact by fact determination.

Senator LANKFORD. My time is up. There has not been an economic study on the impact of this?

Mr. GRIFFIN. There were briefs filed on both sides of this in the Browning-Ferris case. There were a number of briefs filed that said the joint employer standard "ain't broke, don't fix it." There were a number of briefs urging a change. Many of those briefs cited economic studies and other information.

The Board itself did not conduct a separate economic study and in fact, it is statutorily prohibited from doing so.

Senator BLUNT. We will have time for another round if you have time, Mr. Lankford. Mr. Shelby.

Senator LANKFORD. Thank you.

Senator SHELBY. Thank you. A lot of people are concerned, Mr. Chairman, about it seems that this Administration, and you are part of that, are trying to unionize America. What is the percentage of union workers in the private sector in America? Is it 10 percent, 9 percent, 8 percent? What is it, roughly? Not government. I am talking about privately owned companies, private companies.

Mr. PEARCE. My understanding is it is a little over 6 percent.

Senator SHELBY. Six percent?

Mr. PEARCE. That is right.

Senator SHELBY. Getting into the franchise question here, are you moving to trying to say that if I had a franchise, this is McDonald's, but say it is Jiffy Lube or something like that, two or three of them, I buy the franchise. I go by the rules, but I hire the people. I fire the people. I hope not. If they did not work, I would have to. I pay the people.

Let's say I promote myself, say a 401(k) for them, everything, control. I control the workforce. That has been traditionally separate from say the corporate company that issues the franchise being part of a unit, is that not right? Are you not moving toward unionization in areas where we have not seen that before?

Mr. PEARCE. Unfortunately, Senator, McDonald's is not a case before the Board, so it would be inappropriate for me to comment on that. Perhaps you might want to direct that question to——

RIGHT TO WORK

Senator SHELBY. We will watch what you do. We are concerned with what you are doing and the direction you are going. I want to associate myself—I come from Alabama. We are a right to work State and we want to stay that way.

If somebody wants to join a union, that is fine. If they do not want to join the union, that is also fine. There ought to be a balance there. It has been until this Administration and you folks have gone in there and you are trying to change the rules. Everybody knows that. It is pretty transparent.

BLOCKING CHARGES

I have a question. According to the National Labor Relations Board's 2015 budget justification, one of the agency's stated major goals is to promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act.

Often times, unions file multiple rounds of what they call "blocking charges," where union election petitions are placed on hold when an unfair labor practice claim is filed with the NLRB.

A lot of us are concerned with the National Labor Relation's Board's attempt to keep union election campaigns open, just seems like indefinitely, as long as possible through multiple rounds of blocking charges, manipulating the system.

For example, in Alabama, my State, there was a vote left open for over 4 years, Mr. Chairman, due to an ongoing pending investigation. Somebody filed an unfair labor. An ultimate decision that the blocking charges—I fear that without timely consideration—it is important. The blocking charges are a form of extortion without an end in sight. Where do you stop?

Can you explain to the committee what a blocking charge is, and if there is any definitive date in which the National Labor Relations Board must complete its investigation into the allegations to abide by its goal of "providing prompt"—these are your words or the Board's words—"and fair investigations?"

Mr. PEARCE. Thank you, Senator, for giving me this opportunity. A blocking charge is usually a charge that is filed because the nature of the unfair labor practice would negatively affect the laboratory conditions of the election——

Senator SHELBY. Give me an example of what you mean? Just an example.

Mr. PEARCE. An example would be the union files a petition of shoe factory workers, let's say, and the employer decides to start firing every worker that he suspects has voted for the union, or the employer has determined that Joe in shift one is responsible for bringing the union in, so he fires Joe, and as a result, everybody——

Senator SHELBY. I did not think you could do that.

Mr. PEARCE. Excuse me?

Senator SHELBY. I did not think you could do that. I thought they could not fire them for that reason.

Mr. PEARCE. They could not legally fire them for that reason, but that happens. That is why we are in business.

Because of these rampant unfair labor practices, the laboratory conditions are such that people could not fairly feel they are exercising free choice in voting for a union, a blocking charge would result, and that charge would have to be completely investigated, and the unfair labor practice resolved, so the slate would be clear so you have an open, free and fair election.

Senator SHELBY. What if an employer filed an unfair labor charge against the union trying to organize, do you close the election or do you keep it open? What do you do?

Mr. PEARCE. The employer has the ability under certain circumstances to file unfair labor practices, but usually that is because of a union engaging in activities that disrupt the workplace.

The employer has also the ability to file objections to conduct that would cause the election, if found meritorious, to be set aside and a new election held.

INJUNCTIVE RELIEF RELATED TO EMPLOYEE TERMINATION

Senator SHELBY. Let me get in another question. My time is limited. It is my understanding that the National Labor Relations Board explores the opportunity to file a lawsuit in Federal Court seeking injunctive relief each time a union supporter is terminated by a company.

Does the National Labor Relations Board have internal processes in place to provide a means for reinstating a terminated employee, and if so, it seems to me that filing that lawsuit could be unnecessary and redundant use of resources. Is that true? Do you go to court every time just about somebody is fired for cause and noncause?

Mr. PEARCE. Senator, I do not think that is entirely the case. The only time the General Counsel goes to court seeking an injunction is where there is irreparable harm that has been caused as a result of the unfair labor practice, and in order for stability to be restored and not irreparably damaged by waiting for the litigation, the General Counsel would go to Federal Court to seek a cease and desist.

REGULATORY COST BENEFIT ANALYSIS

Senator SHELBY. We often hear about the cost of compliance of Federal regulations everywhere, including the National Labor Relations Board. Does the National Labor Relations Board ever conduct cost/benefit analysis on rules that it promulgates? If not, why not? In other words, what is the cost/benefit of a rule? There are plusses and minuses everywhere.

Mr. PEARCE. Certainly. There are different rules as well. We would have to assess what kind of rule we are talking about. If we want to use——

Senator SHELBY. We are just talking about a cost/benefit analysis, economic costs.

Mr. PEARCE. Right, certainly. One of the reasons why we did these recent rules is because we wanted to eliminate unnecessary litigation. There is a lot of resources expended for unnecessary litigation that we thought it would be appropriate for the American public to benefit from what we hope to be cost savings as a result of these circumstances.

We have pushed to post-election a lot of issues that do not necessarily have to be decided in a pre-election hearing until after the election. Oftentimes, depending on the result of the election, those issues become mute and become unnecessary for litigation to take place.

When we have litigation, it involves the paying of court reporters, the paying of government attorneys, the attorneys representing each of the stakeholders in the process. That becomes an expensive proposition.

Senator SHELBY. Mr. Chairman, I know my time has run, but I could ask quickly one last question?

Senator BLUNT. Yes.

COLLECTIVE BARGAINING UNITS

Senator SHELBY. Unit determination. This has been raised here. I think it is important from an employer, employee, and the union perspective as to which employees are placed in a voting or bargaining unit. This is especially true for employees who may have virtually all their terms and conditions of employment determined by a labor agreement negotiated between their union and their employer.

Unit determination is also extremely important for the employer, as a strike, a work stoppage by one small micro unit could effectively shut down a plant or all of the employer's operations, as you know.

What steps if any has the Board, the National Labor Relations Board, taken to prevent the undue proliferation of bargaining units in an employer's place of business? In other words, one little employee can shut down the whole place. You have seen that happen.

Senator BLUNT. Before you answer, Mr. Griffin, we are going to count my time in the second round to Senator Shelby. I might have something before the powerful banking committee one of these days.

Senator SHELBY. Thank you. You will have all the time you need.

Senator BLUNT. After you answer that, we will go to Senator Murray and then Senator Lankford.

Senator SHELBY. Thank you. Go ahead.

Mr. PEARCE. It is addressed to me, is that correct, Senator?

Senator SHELBY. Yes.

Mr. PEARCE. First of all, we would say there has not been any documented experience where over proliferation of bargaining units have negatively impacted an employer that has been presented to this agency.

What we have done is we have issued cases like Specialty Healthcare where we have recognized the traditional standards for an appropriate bargaining unit. The average bargaining unit in the United States, the median bargaining unit in the United States ranges from 23 to 28 employees nationwide.

Since the passage of Specialty Healthcare, which was confirmed by the Circuit Court and is adopting a standard that was recommended by another Circuit Court, there has been no change in terms of the proliferation or over proliferation of the bargaining units.

In fact, this unit determination process has been running very smoothly.

Senator SHELBY. Mr. Chairman, thank you for your indulgence.

Senator BLUNT. Thank you, Senator. Senator Murray.

NATIONAL LABOR RELATIONS BOARD CASELOAD

Senator MURRAY. Thank you. I did want to ask you, Mr. Chairman, about your budget request while you were here. Some have said that the NLRB's budget should actually be cut because the caseload has declined.

Can you talk to us about the trends in the Board's workload?

Mr. PEARCE. Thank you, Senator. I am happy to talk about that. The budget request is a modest one. We have had to deal with se-

questration. We have had to deal with shutdowns of the government. We have had to deal with hiring freezes over time that we have never recovered from.

The caseload, while the numbers are different, do not completely tell the story. For example, an election run by this agency for 20 voters or one for 45,000 voters is still considered one case. An example would be in 2013 where a California election had that many voters. That is still one case.

Our caseloads are very time and fact intensive. Our employees are highly specialized individuals that have to investigate cases over vast regions of the United States. We are covering territories that are hundreds of miles apart. We have few investigators to be able to do that.

Senator MURRAY. That adds additional time to any decisions?

Mr. PEARCE. That certainly has that impact. More staff would help to process cases faster. We can deal with complexities of case issues. On the Board side, when we get these complex cases, there are thousands and thousands of pages of transcripts. We are deciding cases, applying this 80-year-old law to an ever changing work environment. They are all very fact specific, and it requires a lot of intensive analysis and investigation.

NATIONAL LABOR RELATIONS BOARD WORK ON BEHALF OF NON-UNION WORKERS

Senator MURRAY. Some have said because there is a declining rate in unionization that the NLRB caseload has been declining. The NLRA actually protects all private sector workers, including those that do not belong to a union.

Talk a little bit about the ways the NLRB is acting to protect the rights of non-union workers.

Mr. PEARCE. Thank you for that, Senator. It is the case that Section 7 of the Act applies to all employees. We have circumstances where two or more employees want to get together and talk about their wages or complain about working conditions. Employees may not be able to function because the lighting is bad or there is not enough heat in the facility and they want to discuss that, and they may be penalized as a result of that.

Those are employees that are entitled to the protection of the Act.

Senator MURRAY. Even though they do not belong to a union, they have protections in this country?

Mr. PEARCE. That is exactly right. The social media cases are another example where you have a lot of employees that are exchanging discussions about terms and conditions of employment over social media. The vast majority of those social media cases that we have decided did not involve unionizing. It involved employees complaining about working conditions and us having to address those issues.

Senator MURRAY. Okay. Thank you very much, and thank you both for being here.

JOINT EMPLOYER STANDARD

Senator BLUNT. Mr. Lankford.

Senator LANKFORD. Thank you, Mr. Chairman. I want to come back again to the franchise issue. The concern is there are so many hundreds of thousands of businesses around the country that are franchises that know the rules right now.

The concern is you were saying so much has changed in the business world over the last 30 years that we need to return to a rule that we had 30 years ago to catch up with what has happened in the last 30 years.

Change is significantly the rules of the game, and at a time when we have increasing complexity in Federal regulations, and local and State regulations, many small businesses need additional help just trying to keep up with the rules. They are not trying to break the rules, they are trying to keep up with the rapidly changing pace of the rules.

My question is when the issue is direct, indirect, or potential control of an employee, how that gets defined in a way when they are dealing with just basic quality standards and verification of standards, which a franchisor would want to do?

They want to make sure the franchises out there are maintaining quality standards, but it suddenly creates this varied rule of where is control, where is not control, what is indirect control, what is potential control of an employee where they may be just giving counsel on a very complicated set of labor laws.

Mr. GRIFFIN. Thank you, Senator, because this is an ongoing battle.

Senator LANKFORD. It is very, very important especially in our economy.

Mr. GRIFFIN. It is very important, and it is very important that we are clear about it. The first thing just to emphasize is that under the old standard, the standard we are talking about, the traditional standard, that we are asking a return to, there were these cases where if the franchisor is just seeking to maintain the quality of the brand or product and the uniformity of the brand or product, they are not a joint employer, and we have specifically said we are not seeking to overturn those cases. That is number one.

Number two, in each of these cases, the small business is the franchisee. In each of these cases, if there is a merit determination made, there is no question that the franchisee has committed—if it is adjudicated, the facts are demonstrated, the franchisee is the one that has committed the unfair labor practice.

The issue here is with respect to the larger business, the franchisor, and whether or not they are jointly responsible in any way, shape, or form. In terms of the small business, the small business either is on the hook if it is a merit determination or they are not, if there is no merit. As I indicated before, the vast majority of cases, 60 percent of these cases, are dismissed.

With respect to the franchisor, there is no open case currently in the United States where we are seeking to hold a franchisor liable under the new standard. In each instance where we are seeking to hold a franchisor liable at this point, it is under the current standard.

We are arguing——

Senator LANKFORD. Right, you are asking for the old standard.

Mr. GRIFFIN. For the old standard, and we are arguing for it because in our view, there are instances where the franchisor goes beyond seeking to protect the brand or product, goes beyond the indirect impact on employment that comes in that situation, and has a more immediate impact on employment, or a bigger impact on employment, and under those circumstances, if particular facts are present, we think the franchisor should be a joint employer.

We also think there are circumstances, and this recent advice memo in Nutritionality is a classic example, where the franchisor does not have sufficient involvement, and therefore, should not be held responsible.

Senator LANKFORD. The issue is you are opening up this opportunity for a lot of litigation here every time a franchisor engages with a franchisee, and that back and forth conversation is common, especially with someone that is new starting a business, a first time franchise owner, they are trying to get the business started.

They are asking for lots of advice, and suddenly, the larger company has to back up and say I cannot give you counsel, I cannot engage at that level because suddenly that is going to connect all of us, where in the past, that was common, to try to help someone get off the ground.

You want training. You want equipment. You want people to be able to move in and start small businesses.

My concern is this creates this artificial wall that actually diminishes the quality of our businesses, diminishes the incentive to start new franchises, and puts this fear into franchisors that I cannot really engage with the quality oversight and verification that I used to do.

Mr. GRIFFIN. Senator, as I indicated, if the nature of the engagement has to do with maintaining the quality of the brand or product or the uniformity of the brand or product, there are cases on that, and we have explicitly said, and I repeat, we are not seeking to overturn——

Senator LANKFORD. I understand that, but when the redefinition changes to direct, indirect, or potential control, there is a lot of interaction between these companies, and you know that full well.

The words "potential control" can mean a lot of things, and it does create just the fear of this wall that I am concerned will diminish the quality of our companies across the entire country and will discourage people from buying into franchises or will set the standard so high that franchisors will not release that authority to people that would like to start a first time business, but it is only going to be people that already have established businesses, and it is tougher to get in the market.

I know this is hypothetical, but you are wading into territory that has serious long term implications for our economy and for a lot of people that want to start small businesses, and I would tell you to tread carefully, and I am aware you are trying to get the courts to engage in this rather than the Board to actually have to make this rule, and I get that.

I am telling you when this comes around, this is going to have long term impacts. I would encourage us to go more careful and with more comment on what we are doing.

I will yield back, Mr. Chairman. Thank you.

Senator BLUNT. Thank you, Senator. On that topic, give me an example of some circumstances. You said there are circumstances where the franchisor has more direct control.

Maybe I will ask one specific question. In Senator Shelby's possible Jiffy Lube, if the franchisor says everybody that works there has to wear a shirt that says Jiffy Lube, I think the question of uniforms came up, is that control of the employee because you tell them they have to wear a shirt that says Jiffy Lube if they work for a Jiffy Lube franchisee?

Mr. GRIFFIN. Thank you, Senator. There is a specific case under the old standard that addresses that issue and specifically with respect to uniforms, which would otherwise be a mandatory term or condition of employment, that you would be obligated to bargain over.

The Board has said in those prior cases that one of the aspects of determining the uniformity or maintaining the uniformity of the brand or product has to do with the wearing of uniforms and that is an insufficient impact to turn the franchisor into a joint employer with the franchisee.

That is settled law and we are not seeking to overturn that.

Senator BLUNT. Is it insufficient by itself or it is insufficient unless there are two or three other things that are similar that suddenly it becomes sufficient?

Mr. GRIFFIN. When I said before that each one of these cases is fact specific, there is a wide variety of the ways franchisors deal with franchisees. Some franchisors, for example, own the property that the franchisee is located in. That obviously leads to a different relationship, particularly in response to labor disputes.

Under those circumstances, it may well be the franchisor provides the security for the facility, the franchisor who calls the police with respect to alleged trespassers and things like that.

That is a very different nature of a relationship than a franchisor who has no involvement with locating the property, who has nothing to do with siting the franchisee's enterprise.

Each one of these cases is going to depend to some extent on the facts and circumstances. What I was saying was the case law where one of the indirect impacts that was essentially discounted because it went to the uniformity of the brand or product was specifically uniform.

Senator BLUNT. If the landlord relationship becomes the critical issue here, I thought it was the employer/employee relationship, what the National Labor Relations Board was concerned about.

Mr. GRIFFIN. One of the things that you look at in these matters is who has control over labor relations. It may be the individual franchisor is responding to a labor dispute in a way that includes responding to picketing or leafletting or other types of protected activity that is going on at the franchisee location, that is one factor I was mentioning.

It may be the reason they are doing it is because it is the landlord. It may be the reason they are doing it is because they have some direct control over labor relations. That would be a factor that would be brought into play and considered in the multiplicity of factors that would be examined in this type of a test.

Again, it is a fact intensive look at a particular relationship, and it is very difficult to make an one size fits all type determination.

Senator BLUNT. Is the only voice so far officially in this action, the only voice of NLRB, your brief to the court, in the case before the court? There is no NLRB rule out there, there is no proposed change in rule, there is no comment period on should we go back to the 1984 rule or is there?

Mr. GRIFFIN. To be clear, the brief is not before a court. It was the Board itself that has the Browning-Ferris case in front of it.

Senator BLUNT. We are not waiting for a court to decide, we are waiting for the Board to decide?

Mr. GRIFFIN. We are waiting for the Board to decide the Browning-Ferris case, and they did a call for briefing. They received many briefs from both parties——

Senator BLUNT. One of them was from their own attorney?

Mr. GRIFFIN. One of which was from the General Counsel's Office, and the General Counsel's Office, just to be clear, has multiple roles. When a case is before the Board, when it is being investigated and when it is being prosecuted, the General Counsel's Office—the regional office is acting on behalf of the General Counsel and is the chief prosecutor.

Once the Board issues a decision in the case, the General Counsel's Office has another branch, the Appellant and Supreme Court Litigation Branch, which defends the Board decision, even if it is contrary to what the General Counsel advocated before it, defends the Board in the courts.

In the case of Browning-Ferris, the General Counsel's Office is expressing the view of the General Counsel's Office as to what joint employer standard the Board should adopt. The Board has not adopted it yet. That case is still under consideration.

Our brief was not the only brief, as I said.

Senator BLUNT. It was the only brief from the General Counsel?

Mr. GRIFFIN. It was the only brief from the General Counsel of the Board.

Senator BLUNT. It does seem to me that your earlier explanation about nobody can go back and quite figure out why the Board changed its view in 1984 could also be the ongoing view of why the Board changed its view in 2015.

Mr. GRIFFIN. Well, there was no request for briefing. There was no notice to the parties. There was no announcement that the Board was considering the issues in those cases.

To the contrary here, the Board had a specific notice for briefing, specifically laid out questions with respect to the joint employer standard, and asked not just parties but for amicus as well to file their views, and there were quite a few briefs that were filed in response, so the Board could have a multiplicity of views, some saying stay with the standard, some saying change the standard, some simply providing information about the changing nature of the workplace.

Senator BLUNT. Well, I think even in the testimony today when we look back at it, we are going to see lots of potential, from the landlord relationship to this relationship, to that relationship, that affects you if you want to be a potential franchisee.

I would have some sympathy with one instance you brought up where somebody else hires people, pays the unemployment compensation, pays the disability, however that works in a given State, and then the person who is the franchisee contracts with them to provide the employees—it would seem to me whoever pays the people, hires the people is responsible for what happens and all the potential liability for that workforce, that is a different circumstance than whether the franchisor is doing this.

I think what many of us would feel here is this has been a significant model for people with hard work and determination and willing to take a chance and can get the banker to take the chance with them to create an opportunity to be an owner of a small business, but now suddenly you don't know if you really own the small business or Jiffy Lube International owns the small business.

It is very complicating, I think. This is a case where clearly there is a lot of interest here. I would certainly ask you to recognize the interest and how you move forward in this.

Senator Murray, do you have other questions?

Senator LANKFORD. Mr. Chairman, can I ask one quick follow up?

Senator BLUNT. Yes, sure can.

Senator LANKFORD. This has been pending for 10 months. Do you know when this decision is going to be made by the Board?

Mr. PEARCE. The Board is under active review of the case. I cannot predict exactly when it will be decided.

Senator LANKFORD. We do not know, 2 weeks, 2 months, 2 years?

Mr. PEARCE. That is right.

Senator LANKFORD. What is typical? It has been before the Board for 10 months. What is a typical time period?

Mr. PEARCE. I am not trying to be cagey, but these cases are all fact intensive. These cases also involve a lot of legal theories and concepts. There are complex issues. We have five Board members, all of whom are independently evaluating and have their independent views with respect to how the case should be decided.

We are in active deliberation on that. It is our hope this case will be decided as expeditiously as possible, and we are working very diligently in that regard. I cannot say more.

Senator BLUNT. Other questions, Senator Lankford?

Senator LANKFORD. No, thank you.

COMPOSITION OF BARGAINING UNITS AND "MICRO-UNIONS"

Senator BLUNT. I have just one or two more. On the micro union question that Senator Shelby asked about, Mr. Pearce, you said there were no examples where over proliferation presented a problem, I think that is how you stated it. No examples of whether this complicates the workforce in any way?

Mr. PEARCE. There has been no documented examples that have been presented before us where over proliferation of bargaining units has created any kind of labor issues.

Senator BLUNT. I thought one of the purposes here of collective bargaining—Missouri is not a right to work State, so we have bargaining, we have unions. I am supportive of what they do and how they do it, and the law that allows them to do it.

I thought the purpose here was to negotiate with one voice rather than individual voices. It seems to me this idea that we could have almost an infinite number of unions at some workplace works against that whole concept. That is just my view, and maybe you can explain to me at some other time, unless you want to explain it right now.

Mr. PEARCE. Well, I can say something about that, Mr. Chairman. I would be glad to. The standard is whether or not the unit being sought is an appropriate one. An appropriate one meaning whether or not there is a community of interest among those employees that are in that bargaining unit.

It is a traditional standard. It is not an innovative standard. It is one that has been part of NLRB jurisprudence for decades.

If you have a facility, for example, that has carpenters, and a facility that has shipping clerks, there is not going to be a community of interest generally between those two——

Senator BLUNT. What about the Macy's store where you recognized the sales force, NLRB recognized the sales force at the fragrance and cosmetics counter and let that group organize even though the entire sales force a year and a half earlier had said they did not want to organize under the same union.

What is unique about the sales force at the fragrance and cosmetics counter that gives them a different view of the workplace than the shoe department next door, the sales force there that was part of not deciding——

Mr. PEARCE. Thank you, Chairman. In that particular case, the fragrance department people were compensated differently than the other salespeople. They had a specialized skill. They had commissions. Their terms and conditions of employment were different than the other sales people in the facility.

Senator BLUNT. Would it have been inappropriate for them to be part of the larger bargaining unit 18 months earlier?

Mr. PEARCE. Well, if the larger bargaining unit——

Senator BLUNT. Was salespeople. They were trying to bargain 18 months earlier to be part of the unionized sales force, was that an inappropriate group to be part of that?

Mr. PEARCE. I would not speculate on whether or not it was an appropriate unit because that was not before us for analysis. I do not know what other factors would have come into play to make a determination as to whether there was a distinction or a commonality that would be useful in that assessment.

I should point out that in the other case, Bergdorf Goodman and Neiman Marcus, we made a determination that the unit that was sought was not an appropriate one because it constituted a fractured unit. There was not a sufficient commonality.

We have cut it both ways under that standard. Both employers and unions have used our standard in making effective arguments as to why a unit should be expanded or restricted.

ADDITIONAL COMMITTEE QUESTIONS

One example is a case called Odwalla, the juice company, where the union wanted to have a defined bargaining unit, and the employer arguing Specialty Healthcare says the merchandisers should be included in that bargaining unit, and we agreed with them.

Senator BLUNT. Any other questions, Senator Murray?

Senator MURRAY. No.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ROY BLUNT

Question. Mr. Griffin, how many times in the past has the General Counsel issued complaints based on a change he or she wanted the Board to make to existing policy or precedent rather than based on current policy and established case law?

Answer. General Counsels have generally agreed that where the National Labor Relations Board has not clearly spoken on a serious issue of national labor policy, the General Counsel should exercise prosecutorial discretion in a way that allows the unresolved issue to be presented to the Board for decision. Based upon review of potential law reform complaint authorizations in about the last 15 years, which cover the terms of General Counsels and Acting General Counsels appointed by both Democrat and Republican presidents, complaints involving at least twenty different subject matters have been authorized under existing law with an urging to consider an alternate theory or to give the Board an opportunity to rethink its precedent in light of judicial criticism, as well as the views of Board dissenters.

Question. Given that the General Counsel himself cannot change the Board's standard, how do you justify taking the action you did against McDonald's?

Answer. The consolidated complaint against McDonald's comports with typical actions taken by former General Counsels. Specifically, we are litigating the matter under the current joint employer standard. Additionally, following the past practice of other General Counsels, we are taking the opportunity to ask the Board to consider changing its current standard by reverting back to the pre-1984 traditional joint employer standard, as we did in the Browning Ferris Industries brief, since it better reflects the industrial realities of today's workplace environment.

Question. Mr. Griffin, since the time you filed the charges against McDonald's based on a new joint employer interpretation, how many other franchisers have been charged with Unfair Labor Practices (ULPs) based on the actions of franchisees?

Answer. We did not file charges against McDonald's. The Agency cannot sua sponte initiate unfair labor practice charges against private sector entities, but rather, investigates only those charges that are filed by members of the public. As to McDonald's specifically, after investigating such charges, we found merit to some and issued a consolidated complaint.

Question. Mr. Griffin, the Wage and Hour Division at the Department of Labor has been approaching employers about creating—on a voluntary basis—oversight agreements with their suppliers with respect to Fair Labor Standards Act compliance. I understand you were asked a few months ago whether you would be inclined to consider these types of voluntary agreements as a basis for joint employer status. You reportedly said you would. Is that still your position?

Answer. Thank you for the opportunity to clarify any miscommunication regarding this issue. The position that I took then, which remains today, is that Regional offices, under my oversight, will continue to investigate allegations of joint employer by considering all evidence. Thus, they could review the language of such agreements, as well as the practices emanating from them, in making decisions related to co-determining terms and conditions of employment. All cases are factually distinct and analysis would be performed on a case-by-case basis.

Question. Mr. Pearce, do you agree or disagree with Mr. Griffin's assessment?

Answer. Unlike the General Counsel, the Board is an appellate tribunal that does not issue advisory opinions on this kind of question. Instead, it rules on the question if and when it is presented in a case that comes before it, based on the evidence in the case and the legal arguments made by the parties. I am not aware of any case pending before the Board that presents this issue.

Question. Would either of you consider that to be deceiving well-meaning employers into joint employer status?

Answer. [Pearce] No.

Answer. [Griffin]I do not believe that to be deceptive.

Question. Have either of you had any communications with Wage and Hour Division (WHD) to coordinate on use of this tactic to pull employers together under an emerging new joint employer standard?

Answer. [Pearce] No.

Answer. [Griffin] I have not engaged in such communications with the Wage and Hour Division.

Question. Mr. Pearce, to what degree does the Board intend to apply a modified joint employer standard to even more distant business relationships, such as parts suppliers or hired cleaning crews for example?

Answer. The issue of the joint employer standard is currently before the Board; therefore, it would be inappropriate for me to comment.

Question. After the "ambush rule" was finalized, both chambers of Congress voted to overturn the rule via the Congressional Review Act process. Doesn't the fact that the Congress—the elected body that oversees your Board as well as the law and its intent—voted to reverse your action send a strong message to the Board that it has overstepped?

Answer. I take seriously all measures passed by Congress. With respect to interpretation of the National Labor Relations Act (NLRA) and its amendments, I follow the law established by the Supreme Court regarding how to ascertain congressional intent. While this is a substantial body of law, which I will not attempt to summarize here, I believe that the most significant considerations when seeking to ascertain the intent of Congress in enacting the NLRA and its amendments are the statutory language and the legislative history of the respective enactment, in that order.

Question. In light of the votes in Congress, has the Board given thought to modifying, scaling back, or repealing its rule?

Answer. The Board is not considering further rulemaking in this area at this time.

Question. The NLRB has undertaken a restructuring of its field organization over the last 3 years. Your budget notes that resources are now better aligned with regional caseload. This result, combined with other efficiencies an agency would hope to achieve through a large-scale reorganization, would be expected to yield financial savings. However, the agency did not reduce its request for any activity and, in fact, increased its request for field investigations. Please describe the goals of the realignment and what, if any efficiencies were achieved?

Answer. The goals of the Agency's realignment, both in field offices and headquarters, was to streamline operations, decrease duplication, and take advantage of technological advances. In the field, we consolidated Regional offices thereby reducing the number from 32 to 26. In doing so, we decreased the number of Senior Executive Service Regional Directors, as well as redundancies in compliance and office management. We also closed the Jacksonville resident office, and are considering closing the Des Moines resident office, which saves costs associated with rent.

In headquarters, we created a Division of Legal Counsel, thereby creating a forum for "one stop shopping". Specifically, we consolidated the Special Litigation and Contempt and Compliance Litigation Branches based on the overlap and dovetailing of functions. We also moved a Compliance Unit into the Operations-Management Division to better assist field offices with obtaining compliance with decisions and orders. Additionally, we combined our government and legal ethics into one branch to ensure a broad and consistent review of overlapping issues, and we centralized our FOIA functions, such that all requests and appeals involving both General Counsel and Board-side matters are handled by the FOIA Branch, which now is also handling FOIA requests initially directed to field offices thereby allowing Board agents in the field to better serve the public.

Additionally, we have consolidated eleven separate legacy case tracking systems into an integrated enterprise case management solution. Field offices, as well as headquarters' offices, are now utilizing this same case management system, which allows for remote and instantaneous access to documents contained within case files. We are also further developing our Internet applications, or "apps", and a unified communication system for easier, more effective, and quicker access to information.

Question. Your budget requests 20–25 additional field examiners and attorneys, but does not discuss why the increase is necessary or exactly what they will do. Noting that overall caseload from the recent past is fairly stable and unfair labor practice cases have been down, why is an increase of this size needed—especially after a restructuring to improve caseload efficiency?

Answer. The Agency protects the rights of tens of millions of private sector workers and protects millions of employers from workplace unrest thereby helping to ensure economic stability within this country. The vast majority of the work and public interface of the Agency occurs in the field offices. It is our field attorneys and field examiners that investigate charges, settle and litigate cases, engage in educational outreach to private business owners and their workers, and conduct secret-ballot elections. As I noted previously, we cannot initiate case processing until there is a filing by a member of the public and each case is factually distinct. Thus, in addition to not having control over the number of cases filed, we count each case

as one unit, whether the matter involves an election involving 45,000 nurses, such as a recent California case, a lockout of over 200 workers, such as a recent Memphis case, or the discharge of one individual. Hence, the time and effort needed to handle each case from filing to closing cannot accurately be reflected in a caseload statistic. Additionally, as noted in my opening statement, there are a significant number of Agency employees who are retirement-eligible, and effectuating limited critical hiring of new board agents to absorb their institutional knowledge is crucial for succession planning, productivity, and our overall service to the public.

Question. Mr. Griffin, I would like to ask you about another case called SCA Tissue, which is currently under appeal pending in your office and deals with "minority unionism." The NLRB and General Counsels have dispensed with related questions relatively quickly in the past given the clarity of the National Labor Relations Act and the associated legislative history on the issue of majority rule within a bargaining unit. Why has it sat on your desk for about 8 months? Your regional office dispensed with it quickly and unequivocally. Does your extended review or delay imply that you are considering yet another major departure from precedent and law?

Answer. I would like to thank you for your appreciation of the regional handling of the SCA Tissue case. My Office has recently issued a letter denying the appeal.

Question. Mr. Pearce, is the Board considering changing its previous positions on this issue through this case as well?

Answer. I am not aware of any case pending before the Board that presents this issue.

QUESTIONS SUBMITTED BY SENATOR LAMAR ALEXANDER

Question. Please provide answers to each of the following questions, with supporting data, and please specify the date on which you are calculating the data to answer the questions.

Answer. The date used to calculate the data in all responses is June 3, 2015. Supporting data is included in the following table:

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Election Agreement Issued	Direction of Election Issued
		A	4/14/2015	5/8/2015	24	4/24/2015	.....
1	01–RC–150106	B	4/14/2015	5/8/2015	24	4/24/2015	.....
34	01–RD–150609	A	4/22/2015	5/11/2015	19	4/29/2015	.....
2	02–RC–150235	A	4/16/2015	5/14/2015	28	4/30/2015	.....
2	02–RC–150815	A	4/24/2015	5/21/2015	27	5/12/2015	.....
2	02–RC–151412	A	5/1/2015	5/27/2015	26	5/20/2015	.....
2	02–RC–152009	A	5/11/2015	5/27/2015	16	5/20/2015	.....
3	03–RC–150147	A	4/15/2015	5/11/2015	26	4/22/2015	.....
3	03–RC–150811	A	4/24/2015	5/21/2015	27	4/30/2015	.....
3	03–RC–151272	A	4/30/2015	5/12/2015	12	5/4/2015	.....
3	03–RC–151818	A	5/8/2015	5/28/2015	20	5/15/2015	.....
4	04–RC–150059	A	4/14/2015	5/8/2015	24	4/21/2015	.....
4	04–RC–150177	A	4/16/2015	5/7/2015	21	4/23/2015	.....
4	04–RC–150307	A	4/17/2015	5/8/2015	21	4/24/2015	.....
4	04–RC–150728	A	4/23/2015	5/20/2015	27	4/29/2015	.....
4	04–RC–150790	A	4/24/2015	5/20/2015	26	5/1/2015	.....
4	04–RC–150899	A	4/24/2015	5/21/2015	27	4/30/2015	.....
4	04–RC–151199	A	4/30/2015	5/28/2015	28	5/7/2015	.....
4	04–RC–151419	A	5/4/2015	5/14/2015	10	5/7/2015	.....
5	05–RC–150035	A	4/14/2015	5/13/2015	29	4/20/2015	.....
5	05–RC–150230	A	4/16/2015	5/7/2015	21	4/23/2015	.....
5	05–RC–150645	A	4/22/2015	5/6/2015	14	4/30/2015	.....
5	05–RC–150722	A	4/22/2015	5/14/2015	22	5/1/2015	.....
5	05–RC–151117	A	4/28/2015	5/29/2015	31	5/7/2015	.....
5	05–RC–151753	A	5/7/2015	5/21/2015	14	5/15/2015	.....
6	06–RC–150296	A	4/17/2015	5/15/2015	28	4/24/2015	.....
6	06–RC–150368	A	4/20/2015	5/13/2015	23	4/24/2015	.....
6	06–RC–151386	A	5/1/2015	5/21/2015	20	5/8/2015	.....
7	07–RC–150061	A	4/14/2015	5/8/2015	24	4/21/2015	.....
7	07–RC–150097	A	4/14/2015	5/14/2015	30	.....	5/6/2015
7	07–RC–150286	A	4/17/2015	5/14/2015	27	4/24/2015	.....
7	07–RC–150703	A	4/23/2015	5/15/2015	22	5/6/2015	.....

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Election Agreement Issued	Direction of Election Issued
8	08–RC–150027	A	4/14/2015	4/28/2015	14	4/22/2015	
8	08–RC–150541	A	4/21/2015	5/15/2015	24	5/1/2015	
8	08–RC–150682	A	4/23/2015	5/15/2015	22	5/1/2015	
9	09–RC–150405	A	4/20/2015	5/12/2015	22	4/28/2015	
9	09–RC–150613	A	4/22/2015	5/20/2015	28	4/28/2015	
9	09–RC–151309	A	4/30/2015	5/19/2015	19	5/6/2015	
10	10–RC–150042	A	4/14/2015	5/8/2015	24	4/22/2015	
11	10–RC–150582	A	4/22/2015	5/26/2015	34	4/29/2015	
11	10–RC–150835	A	4/24/2015	5/21/2015	27	5/1/2015	
11	10–RC–151143	A	4/29/2015	5/21/2015	22	5/6/2015	
12	12–RC–151061	A	4/28/2015	5/21/2015	23	5/6/2015	
13	13–RC–150912	A	4/27/2015	5/12/2015	15	5/4/2015	
13	13–RC–150917	A	4/27/2015	5/27/2015	30	5/4/2015	
13	13–UD–151151	A	4/29/2015	5/28/2015	29		5/13/2015
17	14–RC–150243	A	4/16/2015	5/7/2015	21	4/24/2015	
14	14–RC–151115	A	4/29/2015	5/19/2015	20	5/6/2015	
14	14–RC–151350	A	5/1/2015	5/21/2015	20	5/8/2015	
14	14–RC–151446	A	5/4/2015	5/26/2015	22		5/18/2015
26	15–RC–150292	A	4/16/2015	5/14/2015	28	4/24/2015	
15	15–RC–150893	A	4/27/2015	5/28/2015	31	5/6/2015	
15	15–RC–151118	A	4/29/2015	5/19/2015	20	5/6/2015	
16	16–RC–150207	A	4/16/2015	5/7/2015	21	4/24/2015	
16	16–RC–150508	A	4/21/2015	5/19/2015	28	4/28/2015	
16	16–RC–150834	A	4/24/2015	5/21/2015	27	5/1/2015	
16	16–RC–151211	A	4/30/2015	5/27/2015	27	5/7/2015	
16	16–RC–151317	A	4/30/2015	5/19/2015	19	5/8/2015	
		A	4/23/2015	5/13/2015	20	5/4/2015	
		B	4/23/2015	5/13/2015	20	5/4/2015	
18	18–RC–150800	C	4/23/2015	5/13/2015	20	5/4/2015	
18	18–RC–150846	A	4/24/2015	5/21/2015	27	5/1/2015	
18	18–RC–151161	A	4/29/2015	5/27/2015	28	5/6/2015	
18	18–RC–151725	A	5/6/2015	5/20/2015	14	5/11/2015	
18	18–UD–151274	A	4/30/2015	5/27/2015	27	5/8/2015	
19	19–RC–150145	A	4/14/2015	5/14/2015	30	4/23/2015	
36	19–RC–150163	A	4/15/2015	5/15/2015	30	4/23/2015	
19	19–RC–150189	A	4/15/2015	5/12/2015	27	4/23/2015	
		A	4/21/2015	5/14/2015	23	4/30/2015	
19	19–RC–150515	B	4/21/2015	5/14/2015	23	4/30/2015	
19	19–RC–150590	A	4/21/2015	5/19/2015	28		5/6/2015
19	19–RC–150769	A	4/23/2015	5/13/2015	20	4/30/2015	
19	19–RC–151030	A	4/27/2015	5/8/2015	11	5/4/2015	
36	19–RC–151686	A	5/6/2015	5/27/2015	21	5/12/2015	
19	19–RD–151173	A	4/29/2015	5/20/2015	21	5/5/2015	
20	20–RC–150652	A	4/22/2015	5/11/2015	19	4/30/2015	
21	21–RC–150214	A	4/15/2015	5/8/2015	23		5/4/2015
21	21–RC–150242	A	4/15/2015	5/8/2015	23		5/4/2015
21	21–RC–150749	A	4/23/2015	5/27/2015	34		5/20/2015
21	21–RC–150874	A	4/24/2015	5/15/2015	21	4/30/2015	
21	21–RC–150980	A	4/27/2015	5/21/2015	24	5/4/2015	
22	22–RC–150289	A	4/17/2015	4/27/2015	10	4/21/2015	
22	22–RC–150630	A	4/22/2015	5/15/2015	23	4/30/2015	
22	22–RC–150700	A	4/23/2015	5/19/2015	26	5/7/2015	
22	22–RC–151333	A	5/1/2015	5/27/2015	26	5/11/2015	
22	22–RC–151421	A	5/1/2015	5/22/2015	21	5/12/2015	
25	25–RC–150488	A	4/21/2015	5/20/2015	29	4/27/2015	
33	25–RC–150678	A	4/22/2015	5/13/2015	21	4/30/2015	
28	28–RC–150167	A	4/15/2015	5/8/2015	23	4/22/2015	
28	28–RC–150168	A	4/15/2015	5/2/2015	17	4/24/2015	
28	28–RC–150855	A	4/24/2015	5/15/2015	21	5/1/2015	
28	28–RC–151070	A	4/28/2015	5/14/2015	16	5/6/2015	
28	28–RC–152225	A	5/14/2015	5/28/2015	14	5/20/2015	
29	29–RC–150499	A	4/21/2015	5/6/2015	15	4/28/2015	
29	29–RC–150622	A	4/22/2015	5/14/2015	22	4/30/2015	
29	29–RC–150681	A	4/23/2015	5/13/2015	20	4/29/2015	
29	29–RC–151196	A	4/29/2015	5/19/2015	20	5/8/2015	

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Election Agreement Issued	Direction of Election Issued
29	29–RC–151310	A	4/30/2015	5/20/2015	20	5/8/2015	
31	31–RC–150220	A	4/15/2015	5/20/2015	35	4/23/2015	
31	31–RC–150568	A	4/21/2015	5/22/2015	31	4/29/2015	
32	32–RC–150090	A	4/14/2015	5/8/2015	24	4/20/2015	
32	32–RC–150360	A	4/17/2015	5/19/2015	32	4/24/2015	
32	32–RC–150861	A	4/24/2015	5/21/2015	27	5/1/2015	
32	32–RC–151435	A	5/1/2015	5/27/2015	26	5/11/2015	

Question. How many election petitions filed on or after April 14, 2015, have resulted in stipulated elections?

Answer. 95

Question. What percentage of all elections that have occurred based on petitions filed on or after April 14, 2015, has resulted in stipulated elections?

Answer. 93.14 percent

Question. How many election petitions filed on or after April 14, 2015, have resulted in directed elections?

Answer. 7

Question. What percentage of all elections that have occurred based on petitions filed on or after April 14, 2015, has resulted in directed elections?

Answer. 6.8 percent

Question. For all of those directed elections that have occurred or been scheduled based on petitions filed on or after April 14, 2015, please list the date the petition was filed and the date the election occurred, or is scheduled to occur.

Answer. Please see the following table:

ELECTIONS CONDUCTED

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Direction of Election Issued
7	07–RC–150097	A	4/14/2015	5/14/2015	30	5/6/2015
13	13–UD–151151	A	4/29/2015	5/28/2015	29	5/13/2015
14	14–RC–151446	A	5/4/2015	5/26/2015	22	5/18/2015
19	19–RC–150590	A	4/21/2015	5/19/2015	28	5/6/2015
21	21–RC–150214	A	4/15/2015	5/8/2015	23	5/4/2015
21	21–RC–150242	A	4/15/2015	5/8/2015	23	5/4/2015
21	21–RC–150749	A	4/23/2015	5/27/2015	34	5/20/2015

UPCOMING ELECTIONS

Region	Case Number	Unit	Date Filed	Election Date	No. of Days Filing to Election
6	06–RC–152049	A	5/12/2015	6/4/2015	23
5	05–RC–150123	A	4/14/2015	6/5/2015	52
4	04–RC–152582	A	5/20/2015	6/9/2015	20
36	19–RC–150979	A	4/27/2015	6/10/2015	44
4	04–RC–152289	A	5/14/2015	6/14/2015	31

Question. For all of those stipulated elections that have occurred or been scheduled based on petitions filed on or after April 14, 2015, please list the date the petition was filed and the date the election occurred, or is scheduled to occur.

Answer. Please see the following table:

ELECTIONS CONDUCTED

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election
		A	4/14/2015	5/8/2015	24
1	01–RC–150106	B	4/14/2015	5/8/2015	24
34	01–RD–150609	A	4/22/2015	5/11/2015	19
2	02–RC–150235	A	4/16/2015	5/14/2015	28

ELECTIONS CONDUCTED—Continued

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election
2	02–RC–150815	A	4/24/2015	5/21/2015	27
2	02–RC–151412	A	5/1/2015	5/27/2015	26
2	02–RC–152009	A	5/11/2015	5/27/2015	16
3	03–RC–150147	A	4/15/2015	5/11/2015	26
3	03–RC–150811	A	4/24/2015	5/21/2015	27
3	03–RC–151272	A	4/30/2015	5/12/2015	12
3	03–RC–151818	A	5/8/2015	5/28/2015	20
4	04–RC–150059	A	4/14/2015	5/8/2015	24
4	04–RC–150177	A	4/16/2015	5/7/2015	21
4	04–RC–150307	A	4/17/2015	5/8/2015	21
4	04–RC–150728	A	4/23/2015	5/20/2015	27
4	04–RC–150790	A	4/24/2015	5/20/2015	26
4	04–RC–150899	A	4/24/2015	5/21/2015	27
4	04–RC–151199	A	4/30/2015	5/28/2015	28
4	04–RC–151419	A	5/4/2015	5/14/2015	10
5	05–RC–150035	A	4/14/2015	5/13/2015	29
5	05–RC–150230	A	4/16/2015	5/7/2015	21
5	05–RC–150645	A	4/22/2015	5/6/2015	14
5	05–RC–150722	A	4/22/2015	5/14/2015	22
5	05–RC–151117	A	4/28/2015	5/29/2015	31
5	05–RC–151753	A	5/7/2015	5/21/2015	14
6	06–RC–150296	A	4/17/2015	5/15/2015	28
6	06–RC–150368	A	4/20/2015	5/13/2015	23
6	06–RC–151386	A	5/1/2015	5/21/2015	20
7	07–RC–150061	A	4/14/2015	5/8/2015	24
7	07–RC–150286	A	4/17/2015	5/14/2015	27
7	07–RC–150703	A	4/23/2015	5/15/2015	22
8	08–RC–150027	A	4/14/2015	4/28/2015	14
8	08–RC–150541	A	4/21/2015	5/15/2015	24
8	08–RC–150682	A	4/23/2015	5/15/2015	22
9	09–RC–150405	A	4/20/2015	5/12/2015	22
9	09–RC–150613	A	4/22/2015	5/20/2015	28
9	09–RC–151309	A	4/30/2015	5/19/2015	19
10	10–RC–150042	A	4/14/2015	5/8/2015	24
11	10–RC–150582	A	4/22/2015	5/26/2015	34
11	10–RC–150835	A	4/24/2015	5/21/2015	27
11	10–RC–151143	A	4/29/2015	5/21/2015	22
12	12–RC–151061	A	4/28/2015	5/21/2015	23
13	13–RC–150912	A	4/27/2015	5/12/2015	15
13	13–RC–150917	A	4/27/2015	5/27/2015	30
17	14–RC–150243	A	4/16/2015	5/7/2015	21
14	14–RC–151115	A	4/29/2015	5/19/2015	20
14	14–RC–151350	A	5/1/2015	5/21/2015	20
26	15–RC–150292	A	4/16/2015	5/14/2015	28
15	15–RC–150893	A	4/27/2015	5/28/2015	31
15	15–RC–151118	A	4/29/2015	5/19/2015	20
16	16–RC–150207	A	4/16/2015	5/7/2015	21
16	16–RC–150508	A	4/21/2015	5/19/2015	28
16	16–RC–150834	A	4/24/2015	5/21/2015	27
16	16–RC–151211	A	4/30/2015	5/27/2015	27
16	16–RC–151317	A	4/30/2015	5/19/2015	19
		A	4/23/2015	5/13/2015	20
		B	4/23/2015	5/13/2015	20
18	18–RC–150800	C	4/23/2015	5/13/2015	20
18	18–RC–150846	A	4/24/2015	5/21/2015	27
18	18–RC–151161	A	4/29/2015	5/27/2015	28
18	18–RC–151725	A	5/6/2015	5/20/2015	14
18	18–UD–151274	A	4/30/2015	5/27/2015	27
19	19–RC–150145	A	4/14/2015	5/14/2015	30
36	19–RC–150163	A	4/15/2015	5/15/2015	30
19	19–RC–150189	A	4/15/2015	5/12/2015	27
		A	4/21/2015	5/14/2015	23
19	19–RC–150515	B	4/21/2015	5/14/2015	23

ELECTIONS CONDUCTED—Continued

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election
19	19–RC–150769	A	4/23/2015	5/13/2015	20
19	19–RC–151030	A	4/27/2015	5/8/2015	11
36	19–RC–151686	A	5/6/2015	5/27/2015	21
19	19–RD–151173	A	4/29/2015	5/20/2015	21
20	20–RC–150652	A	4/22/2015	5/11/2015	19
21	21–RC–150874	A	4/24/2015	5/15/2015	21
21	21–RC–150980	A	4/27/2015	5/21/2015	24
22	22–RC–150289	A	4/17/2015	4/27/2015	10
22	22–RC–150630	A	4/22/2015	5/15/2015	23
22	22–RC–150700	A	4/23/2015	5/19/2015	26
22	22–RC–151333	A	5/1/2015	5/27/2015	26
22	22–RC–151421	A	5/1/2015	5/22/2015	21
25	25–RC–150488	A	4/21/2015	5/20/2015	29
33	25–RC–150678	A	4/22/2015	5/13/2015	21
28	28–RC–150167	A	4/15/2015	5/8/2015	23
28	28–RC–150168	A	4/15/2015	5/2/2015	17
28	28–RC–150855	A	4/24/2015	5/15/2015	21
28	28–RC–151070	A	4/28/2015	5/14/2015	16
28	28–RC–152225	A	5/14/2015	5/28/2015	14
29	29–RC–150499	A	4/21/2015	5/6/2015	15
29	29–RC–150622	A	4/22/2015	5/14/2015	22
29	29–RC–150681	A	4/23/2015	5/13/2015	20
29	29–RC–151196	A	4/29/2015	5/19/2015	20
29	29–RC–151310	A	4/30/2015	5/20/2015	20
31	31–RC–150220	A	4/15/2015	5/20/2015	35
31	31–RC–150568	A	4/21/2015	5/22/2015	31
32	32–RC–150090	A	4/14/2015	5/8/2015	24
32	32–RC–150360	A	4/17/2015	5/19/2015	32
32	32–RC–150861	A	4/24/2015	5/21/2015	27
32	32–RC–151435	A	5/1/2015	5/27/2015	26

UPCOMING ELECTIONS/RESULT DATA PENDING PROCESSING

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election
1	01–RC–150713	A	4/23/2015	5/28/2015	35
1	01–RC–150809	A	4/24/2015	5/22/2015	28
1	01–RC–151218	A	4/30/2015	5/21/2015	21
1	01–RC–151620	A	5/5/2015	5/29/2015	24
1	01–RC–151899	A	5/8/2015	6/2/2015	25
1	01–RC–152774	A	5/21/2015	6/18/2015	28
2	02–RC–150504	A	4/21/2015	5/19/2015	28
2	02–RC–151248	A	4/29/2015	5/19/2015	20
2	02–RC–151250	A	4/29/2015	5/19/2015	20
2	02–RC–151254	A	4/29/2015	5/19/2015	20
2	02–RC–151256	A	4/29/2015	5/19/2015	20
2	02–RC–151260	A	4/29/2015	5/19/2015	20
2	02–RC–151262	A	4/29/2015	5/19/2015	20
2	02–RC–151264	A	4/29/2015	5/19/2015	20
2	02–RC–151269	A	4/29/2015	5/19/2015	20
2	02–RC–151275	A	4/29/2015	5/19/2015	20
2	02–RC–151277	A	4/29/2015	5/19/2015	20
2	02–RC–151280	A	4/29/2015	5/19/2015	20
2	02–RC–151283	A	4/29/2015	5/19/2015	20
2	02–RC–151287	A	4/29/2015	5/19/2015	20
2	02–RC–151289	A	4/29/2015	5/19/2015	20
2	02–RC–151509	A	5/4/2015	5/29/2015	25
2	02–RC–151774	A	5/7/2015	6/10/2015	34
2	02–RC–151873	A	5/8/2015	6/11/2015	34
2	02–RC–151977	A	5/11/2015	6/5/2015	25
2	02–RC–152260	A	5/14/2015	6/9/2015	26
2	02–RC–152307	A	5/14/2015	5/29/2015	15

UPCOMING ELECTIONS/RESULT DATA PENDING PROCESSING—Continued

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election
2	02–RC–152311	A	5/14/2015	5/29/2015	15
2	02–RC–152315	A	5/14/2015	5/29/2015	15
2	02–RC–152324	A	5/14/2015	5/29/2015	15
2	02–RC–152328	A	5/14/2015	5/29/2015	15
2	02–RC–152794	A	5/22/2015	6/11/2015	20
2	02–RC–152988	A	5/27/2015	6/16/2015	20
2	02–RC–153140	A	5/29/2015	6/18/2015	20
3	03–RC–151634	A	5/6/2015	6/3/2015	28
3	03–RC–151734	A	5/7/2015	6/10/2015	34
3	03–RC–151849	A	5/8/2015	6/3/2015	26
4	04–RC–150782	A	4/23/2015	5/18/2015	25
4	04–RC–151815	A	5/8/2015	6/5/2015	28
4	04–RC–152380	A	5/15/2015	6/12/2015	28
4	04–RC–152418	A	5/18/2015	6/2/2015	15
4	04–RC–152491	A	5/18/2015	6/12/2015	25
5	05–RC–151107	A	4/27/2015	5/15/2015	18
5	05–RC–151468	A	5/4/2015	5/26/2015	22
5	05–RC–151470	A	5/4/2015	5/26/2015	22
5	05–RC–151866	A	5/8/2015	5/20/2015	12
5	05–RC–151933	A	5/8/2015	6/10/2015	33
5	05–RC–151975	A	5/11/2015	6/15/2015	35
5	05–RC–152880	A	5/26/2015	6/19/2015	24
6	06–RC–151701	A	5/7/2015	6/5/2015	29
6	06–RC–152112	A	5/13/2015	6/5/2015	23
6	06–RC–152299	A	5/15/2015	6/3/2015	19
6	06–RC–152300	A	5/15/2015	6/3/2015	19
7	07–RC–151406	A	5/4/2015	6/5/2015	32
7	07–RC–151697	A	5/6/2015	6/11/2015	36
7	07–RC–152676	A	5/21/2015	6/19/2015	29
8	08–RC–152337	A	5/15/2015	6/11/2015	27
8	08–RC–152489	A	5/18/2015	6/16/2015	29
9	09–RC–151181	A	4/29/2015	6/4/2015	36
9	09–RC–152759	A	5/21/2015	6/18/2015	28
9	09–RD–152544	A	5/19/2015	6/11/2015	23
9	09–RD–152899	A	5/26/2015	6/17/2015	22
11	10–RC–150828	A	4/24/2015	6/1/2015	38
10	10–RC–151812	A	5/8/2015	6/5/2015	28
26NAS	10–RC–151941	A	5/11/2015	6/11/2015	31
10	10–RC–151942	A	5/11/2015	6/10/2015	30
11	10–RC–151954	A	5/11/2015	6/18/2015	38
10	10–RC–152420	A	5/18/2015	6/14/2015	27
11	10–RC–152911	A	5/26/2015	6/24/2015	29
10	10–RC–152954	A	5/26/2015	6/24/2015	29
11	10–RC–153364	A	6/1/2015	6/18/2015	17
12	12–RC–151666	A	5/6/2015	6/5/2015	30
24	12–RC–152435	A	5/18/2015	6/17/2015	30
12	12–RD–152062	A	5/12/2015	6/2/2015	21
12	12–RD–152150	A	5/13/2015	6/11/2015	29
13	13–RC–151747	A	5/7/2015	6/3/2015	27
13	13–RC–151943	A	5/11/2015	6/9/2015	29
13	13–RC–152029	A	5/12/2015	6/4/2015	23
13	13–RC–152584	A	5/20/2015	6/11/2015	22
13	13–RC–152961	A	5/27/2015	6/9/2015	13
17	14–RC–151485	A	5/4/2015	5/26/2015	22
17	14–RC–151535	A	5/5/2015	5/28/2015	23
17	14–RC–152208	A	5/14/2015	6/9/2015	26
14	14–RC–152209	A	5/14/2015	6/12/2015	29
14	14–RC–152597	A	5/20/2015	6/10/2015	21
15	15–RC–151772	A	5/7/2015	5/27/2015	20
16	16–RC–150545	A	4/21/2015	5/12/2015	21
16	16–RC–151853	A	5/8/2015	6/4/2015	27
16	16–RC–152504	A	5/18/2015	6/10/2015	23
16	16–RC–152831	A	5/22/2015	6/17/2015	26

UPCOMING ELECTIONS/RESULT DATA PENDING PROCESSING—Continued

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election
30	18–RC–152189	A	5/13/2015	6/5/2015	23
18	18–RC–152558	A	5/19/2015	6/9/2015	21
30	18–RD–152017	A	5/12/2015	6/3/2015	22
36	19–RC–151976	A	5/11/2015	6/2/2015	22
19	19–RC–152006	A	5/11/2015	6/8/2015	28
19	19–RC–152056	A	5/11/2015	6/12/2015	32
19	19–RC–152188	A	5/12/2015	6/3/2015	22
19	19–RC–153166	A	5/28/2015	6/9/2015	12
19	19–RM–152841	A	5/21/2015	6/17/2015	27
37	20–RC–151684	A	5/6/2015	5/27/2015	21
20	20–RC–151884	A	5/8/2015	6/2/2015	25
37	20–RC–152268	A	5/14/2015	6/13/2015	30
20	20–RC–152357	A	5/15/2015	6/4/2015	20
20	20–RC–152837	A	5/22/2015	6/23/2015	32
21	21–RC–151499	A	5/4/2015	5/26/2015	22
21	21–RC–151906	A	5/8/2015	6/12/2015	35
21	21–RC–152158	A	5/13/2015	6/19/2015	37
21	21–RC–152279	A	5/14/2015	6/5/2015	22
21	21–RC–152782	A	5/21/2015	6/18/2015	28
22	22–RC–152085	A	5/13/2015	6/1/2015	19
22	22–RC–152243	A	5/13/2015	6/12/2015	30
22	22–RC–152670	A	5/20/2015	6/18/2015	29
22	22–RC–152994	A	5/27/2015	6/5/2015	9
22	22–RC–153040	A	5/27/2015	6/19/2015	23
22	22–RD–152244	A	5/14/2015	6/5/2015	22
25	25–RC–152157	A	5/13/2015	6/10/2015	28
25	25–RC–152622	A	5/20/2015	6/18/2015	29
25	25–RC–152894	A	5/26/2015	6/19/2015	24
27	27–RC–151076	A	4/28/2015	5/20/2015	22
27	27–RC–152884	A	5/26/2015	6/16/2015	21
28	28–RC–152165	A	5/13/2015	6/3/2015	21
28	28–RC–152340	A	5/15/2015	6/6/2015	22
29	29–RC–152044	A	5/12/2015	6/3/2015	22
29	29–RC–152688	A	5/21/2015	6/17/2015	27
29	29–RC–152739	A	5/21/2015	6/5/2015	15
29	29–RC–152972	A	5/27/2015	6/19/2015	23
29	29–RD–152140	A	5/13/2015	6/10/2015	28
29	29–UD–152042	A	5/12/2015	6/3/2015	22
31	31–RC–151985	A	5/11/2015	6/8/2015	28
31	31–RC–152471	A	5/18/2015	6/10/2015	23
32	32–RC–152365	A	5/15/2015	6/16/2015	32
32	32–RC–152621	A	5/20/2015	6/11/2015	22
32	32–RC–152968	A	5/26/2015	6/17/2015	22
32	32–RD–152636	A	5/20/2015	6/17/2015	28

Question. Please provide election result data for all of the elections that have occurred based on petitions filed on or after April 14, 2015.

Answer. Please see the following table:

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Election Approved	Direction of Election Issued	Election Result
		A	4/14/2015	5/8/2015	24	4/24/2015		
1	01–RC–150106	B	4/14/2015	5/8/2015	24	4/24/2015		
34	01–RD–150609	A	4/22/2015	5/11/2015	19	4/29/2015		Certific. of Representative
2	02–RC–150235	A	4/16/2015	5/14/2015	28	4/30/2015		
2	02–RC–150815	A	4/24/2015	5/21/2015	27	5/12/2015		Certific. of Representative
2	02–RC–151412	A	5/1/2015	5/27/2015	26	5/20/2015		
2	02–RC–152009	A	5/11/2015	5/27/2015	16	5/20/2015		
3	03–RC–150147	A	4/15/2015	5/11/2015	26	4/22/2015		
3	03–RC–150811	A	4/24/2015	5/21/2015	27	4/30/2015		Certification of Results
3	03–RC–151272	A	4/30/2015	5/12/2015	12	5/4/2015		
3	03–RC–151818	A	5/8/2015	5/28/2015	20	5/15/2015		
4	04–RC–150059	A	4/14/2015	5/8/2015	24	4/21/2015		Certification of Results

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Election Approved	Direction of Election Issued	Election Result
4	04–RC–150177	A	4/16/2015	5/7/2015	21	4/23/2015		Certification of Results
4	04–RC–150307	A	4/17/2015	5/8/2015	21	4/24/2015		Certification of Results
4	04–RC–150728	A	4/23/2015	5/20/2015	27	4/29/2015		Certification of Results
4	04–RC–150790	A	4/24/2015	5/20/2015	26	5/1/2015		Certific. of Representative
4	04–RC–150899	A	4/24/2015	5/21/2015	27	4/30/2015		Certific. of Representative
4	04–RC–151199	A	4/30/2015	5/28/2015	28	5/7/2015		
4	04–RC–151419	A	5/4/2015	5/14/2015	10	5/7/2015		Certification of Results
5	05–RC–150035	A	4/14/2015	5/13/2015	29	4/20/2015		Certification of Results
5	05–RC–150230	A	4/16/2015	5/7/2015	21	4/23/2015		Certification of Results
5	05–RC–150645	A	4/22/2015	5/6/2015	14	4/30/2015		Certific. of Representative
5	05–RC–150722	A	4/22/2015	5/14/2015	22	5/1/2015		Certific. of Representative
5	05–RC–151117	A	4/28/2015	5/29/2015	31	5/7/2015		
5	05–RC–151753	A	5/7/2015	5/21/2015	14	5/15/2015		Certification of Results
6	06–RC–150296	A	4/17/2015	5/15/2015	28	4/24/2015		Certification of Results
6	06–RC–150368	A	4/20/2015	5/13/2015	23	4/24/2015		Certification of Results
6	06–RC–151386	A	5/1/2015	5/21/2015	20	5/8/2015		Certification of Results
7	07–RC–150061	A	4/14/2015	5/8/2015	24	4/21/2015		
7	07–RC–150097	A	4/14/2015	5/14/2015	30		5/6/2015	
7	07–RC–150286	A	4/17/2015	5/14/2015	27	4/24/2015		Certification of Results
7	07–RC–150703	A	4/23/2015	5/15/2015	22	5/6/2015		Certification of Results
8	08–RC–150027	A	4/14/2015	4/28/2015	14	4/22/2015		Certific. of Representative
8	08–RC–150541	A	4/21/2015	5/15/2015	24	5/1/2015		Certific. of Representative
8	08–RC–150682	A	4/23/2015	5/15/2015	22	5/1/2015		Certification of Results
9	09–RC–150405	A	4/20/2015	5/12/2015	22	4/28/2015		Certific. of Representative
9	09–RC–150613	A	4/22/2015	5/20/2015	28	4/28/2015		Certific. of Representative
9	09–RC–151309	A	4/30/2015	5/19/2015	19	5/6/2015		Certification of Results
10	10–RC–150042	A	4/14/2015	5/8/2015	24	4/22/2015		
11	10–RC–150582	A	4/22/2015	5/26/2015	34	4/29/2015		
11	10–RC–150835	A	4/24/2015	5/21/2015	27	5/1/2015		Certific. of Representative
11	10–RC–151143	A	4/29/2015	5/21/2015	22	5/6/2015		Certific. of Representative
12	12–RC–151061	A	4/28/2015	5/21/2015	23	5/6/2015		
13	13–RC–150912	A	4/27/2015	5/12/2015	15	5/4/2015		Certific. of Representative
13	13–RC–150917	A	4/27/2015	5/27/2015	30	5/4/2015		
13	13–UD–151151	A	4/29/2015	5/28/2015	29		5/13/2015	
17	14–RC–150243	A	4/16/2015	5/7/2015	21	4/24/2015		Certific. of Representative
14	14–RC–151115	A	4/29/2015	5/19/2015	20	5/6/2015		
14	14–RC–151350	A	5/1/2015	5/21/2015	20	5/8/2015		Certification of Results
14	14–RC–151446	A	5/4/2015	5/26/2015	22		5/18/2015	
26	15–RC–150292	A	4/16/2015	5/14/2015	28	4/24/2015		
15	15–RC–150893	A	4/27/2015	5/28/2015	31	5/6/2015		
15	15–RC–151118	A	4/29/2015	5/19/2015	20	5/6/2015		Certific. of Representative
16	16–RC–150207	A	4/16/2015	5/7/2015	21	4/24/2015		Certific. of Representative
16	16–RC–150508	A	4/21/2015	5/19/2015	28	4/28/2015		Certific. of Representative
16	16–RC–150834	A	4/24/2015	5/21/2015	27	5/1/2015		Certific. of Representative
16	16–RC–151211	A	4/30/2015	5/27/2015	27	5/7/2015		
16	16–RC–151317	A	4/30/2015	5/19/2015	19	5/8/2015		Certification of Results
		A	4/23/2015	5/13/2015	20	5/4/2015		
		B	4/23/2015	5/13/2015	20	5/4/2015		
18	18–RC–150800	C	4/23/2015	5/13/2015	20	5/4/2015		
18	18–RC–150846	A	4/24/2015	5/21/2015	27	5/1/2015		Certific. of Representative
18	18–RC–151161	A	4/29/2015	5/27/2015	28	5/6/2015		
18	18–RC–151725	A	5/6/2015	5/20/2015	14	5/11/2015		Certific. of Representative
18	18–UD–151274	A	4/30/2015	5/27/2015	27	5/8/2015		
								Certific. of Representative
19	19–RC–150145	A	4/14/2015	5/14/2015	30	4/23/2015		Certific. of Representative
36	19–RC–150163	A	4/15/2015	5/15/2015	30	4/23/2015		
19	19–RC–150189	A	4/15/2015	5/12/2015	27	4/23/2015		Certific. of Representative
		A	4/21/2015	5/14/2015	23	4/30/2015		
19	19–RC–150515	B	4/21/2015	5/14/2015	23	4/30/2015		
19	19–RC–150590	A	4/21/2015	5/19/2015	28		5/6/2015	Certific. of Representative
19	19–RC–150769	A	4/23/2015	5/13/2015	20	4/30/2015		Certific. of Representative
19	19–RC–151030	A	4/27/2015	5/8/2015	11	5/4/2015		Certification of Results
36	19–RC–151686	A	5/6/2015	5/27/2015	21	5/12/2015		
19	19–RD–151173	A	4/29/2015	5/20/2015	21	5/5/2015		Certific. of Representative
20	20–RC–150652	A	4/22/2015	5/11/2015	19	4/30/2015		Certification of Results
21	21–RC–150214	A	4/15/2015	5/8/2015	23		5/4/2015	Certification of Results
21	21–RC–150242	A	4/15/2015	5/8/2015	23		5/4/2015	Certification of Results
21	21–RC–150749	A	4/23/2015	5/27/2015	34		5/20/2015	
21	21–RC–150874	A	4/24/2015	5/15/2015	21	4/30/2015		Certific. of Representative
21	21–RC–150980	A	4/27/2015	5/21/2015	24	5/4/2015		Certific. of Representative
22	22–RC–150289	A	4/17/2015	4/27/2015	10	4/21/2015		Certific. of Representative
22	22–RC–150630	A	4/22/2015	5/15/2015	23	4/30/2015		Certification of Results
22	22–RC–150700	A	4/23/2015	5/19/2015	26	5/7/2015		Certific. of Representative
22	22–RC–151333	A	5/1/2015	5/27/2015	26	5/11/2015		

Region	Case Number	Unit	Date Filed	Election Held Date	No. of Days Filing to Election	Election Approved	Direction of Election Issued	Election Result
22	22–RC–151421	A	5/1/2015	5/22/2015	21	5/12/2015		Certification of Results
25	25–RC–150488	A	4/21/2015	5/20/2015	29	4/27/2015		
33	25–RC–150678	A	4/22/2015	5/13/2015	21	4/30/2015		Certific. of Representative
28	28–RC–150167	A	4/15/2015	5/8/2015	23	4/22/2015		
28	28–RC–150168	A	4/15/2015	5/2/2015	17	4/24/2015		
28	28–RC–150855	A	4/24/2015	5/15/2015	21	5/1/2015		Certific. of Representative
28	28–RC–151070	A	4/28/2015	5/14/2015	16	5/6/2015		Certific. of Representative
28	28–RC–152225	A	5/14/2015	5/28/2015	14	5/20/2015		
29	29–RC–150499	A	4/21/2015	5/6/2015	15	4/28/2015		Certification of Results
29	29–RC–150622	A	4/22/2015	5/14/2015	22	4/30/2015		
29	29–RC–150681	A	4/23/2015	5/13/2015	20	4/29/2015		Certific. of Representative
29	29–RC–151196	A	4/29/2015	5/19/2015	20	5/8/2015		Certific. of Representative
29	29–RC–151310	A	4/30/2015	5/20/2015	20	5/8/2015		Certific. of Representative
31	31–RC–150220	A	4/15/2015	5/20/2015	35	4/23/2015		Certific. of Representative
31	31–RC–150568	A	4/21/2015	5/22/2015	31	4/29/2015		
32	32–RC–150090	A	4/14/2015	5/8/2015	24	4/20/2015		
32	32–RC–150360	A	4/17/2015	5/19/2015	32	4/24/2015		Certific. of Representative
32	32–RC–150861	A	4/24/2015	5/21/2015	27	5/1/2015		Certification of Results
32	32–RC–151435	A	5/1/2015	5/27/2015	26	5/11/2015		

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

Question. Under the Board's rule governing the processing of representation petition that went into effect on April 14 of this year, employers are required to furnish employee names, personal telephone numbers, personal email address, job classification, shift times, in addition to mailing address within 2 days following direction of election. These so-called 'Excelsior lists' are required without significant direction on how the Union may use the contact information following the election. The Board itself has said that "it would not be appropriate at this time to specify a remedy, or set of remedies, that would be appropriate in all situations." Can you expand on why it would not be appropriate to provide clarity on this issue at this time? Would you agree that this lack of clearly outlined repercussions for unions violating the privacy rights of workers might lead to more instances of improper use or sale of the personal data than would occur in the presence of clearly defined punishments?

Answer. The amended rule explicitly prohibits use of the Excelsior list "for purposes other than the representation proceeding, Board proceedings arising from it, and related matters." The rule leaves the question of remedies for case-by-case adjudication; thus, in the event of a violation, the Board is not limited by the rule as to the remedy it may impose. This is the same approach that the Board has taken with the preexisting Excelsior rule. The rulemaking record shows not a single instance of voter list misuse during the nearly 50-year existence of the original rule. I am hopeful that the next 50 years will be similarly free of misuse, but I am committed to dealing with any violation that might occur in a firm and appropriate manner.

Question. Illinois has over 36,000 franchise establishments, and franchise businesses employ over 400,000 people in Illinois. Illinois-based franchisors include Bottle & Bottega, BrightStar Care, and Moran Industries. With so many Illinoisans having invested their blood, sweat, and tears into establishing and operating small businesses using the franchise model, it concerns me that the Board has chosen not to go through the formal rule-making process established in the Administrative Procedure Act and the Regulatory Flexibility Act. Shouldn't small business owners in Illinois be afforded the opportunity to provide input on an issue so central to their livelihoods? Why is it that the Board has chosen to issue this new joint employer standard outside of the formal process, which the Board used in the recent rulemaking on Representation Case Procedures?

Answer. In the Browning Ferris case, the parties placed before the Board the issue whether Browning Ferris Industries and a contractor it engaged to provide labor at a recycling facility were joint employers. The case does not involve a franchise arrangement, but nevertheless presents an important legal issue. In order to obtain the benefit of as many different views concerning this issue as possible, the Board issued a public invitation and press release seeking the input of all persons and entities having an interest in the issue. Historically, the Board has decided cases addressing this and similar issues without inviting input from nonparties. The Board has never used rulemaking to address this or similar issues. However, it has used rulemaking dozens of times to amend its procedural rules.

QUESTIONS SUBMITTED BY SENATOR JAMES LANKFORD

Question. In an age where identity theft is a significant risk, I have serious concerns about the lack of privacy protection for employees' personal information in the Board's ambush election Final Rule (79 FR 74307). Under the Rule, petitioners may gain access to the email addresses, cell phone numbers, shift hours, and locations. However, the Final Rule does not comment on how this information should be stored or safeguarded. Additionally, the Rule outright rejects the ability of employees to opt out of having their personal information turned over to a union. Please respond to the following:

What guidance will the Board provide to petitioners on the appropriate storage and protection of employees' private information? If the Board will not issue guidance, please explain why not.

Answer. The rule does not require employers to turn over any information that they do not already have in their possession. The rule does not impose on employers any specific requirements for the storage and security of that information. The rule likewise does not impose on petitioners specific requirements for the storage and security of that information after it has been turned over by employers. However, it explicitly prohibits use of the Excelsior lists "for purposes other than the representation proceeding, Board proceedings arising from it, and related matters." The rule leaves the question of remedies for case-by-case adjudication; thus, in the event of a violation, the Board is not limited by the rule as to the remedy it may impose. This is the same approach that the Board has taken with the pre-existing Excelsior rule. The rulemaking record does not include a single instance of voter list misuse, involving identity theft or otherwise, during the nearly 50-year existence of the original rule. I am hopeful that the next 50 years will be similarly free of misuse, but I am committed to dealing with any violation that might occur in a firm and appropriate manner. The Board is not presently considering further rulemaking on the subject.

Question. Has the Board issued guidance to petitioners on appropriate and timely notification to employees whose personal information is compromised while in the custody of a petitioner? If not, why not?

Answer. As noted above, the rule leaves the question of remedies for the case-by-case adjudication, and nothing prevents the Board from deciding that a petitioner be required to notify employees in the event that their personal information is compromised.

Question. I also have serious concerns about the NLRB's consideration of changes to the joint employer standard. According to the Chamber of Commerce, 89 percent of employers in the United States have fewer than 20 employees. Small businesses spend 36 percent more per employee for regulatory compliance than do larger businesses. Franchising and subcontracting, as a result, help entrepreneurs specialize, become more efficient businessmen and women, and lower barriers to entry. Franchised establishments generated nearly 8.5 million direct jobs and $844 billion of output in 2014. Given that a change in the joint employer standard is expected to create significant chaos for franchisees, increase their regulatory burden and associated costs, and may make hiring more difficult, what steps will the Board take to provide clear and timely guidance to employers when a decision is reached in the joint employer case?

Answer. In the Browning Ferris case, the parties placed before the Board the issue whether Browning Ferris Industries and a contractor it engaged to provide labor at a recycling facility were joint employers. The case does not involve a franchise arrangement, but nevertheless presents an important legal issue, on which the Board has invited broad public input. The case is presently pending before the Board. When the Board decides a case, the published decision typically constitutes the Board's guidance to the public. In the relatively unusual event of a decision that announces a significant change in Board law, the General Counsel often issues a guideline memo explaining how he will apply the decision, if such guidance would be helpful to the public and the Board's field offices.

Question. Regarding the recent Freshii advice memo dated April 28, 2015, in which the Board held that franchisor Freshii is not liable as a "joint employer," please answer the following:

Did you review the memo by Assistant General Counsel Kearney and approve it?

Answer. Yes, I did review and approve the Freshii Advice memo.

Question. What factual differences are there in the McDonald's case and those described in the memo?

Answer. As the McDonald's case is currently being litigated, I do not feel it is appropriate for me to discuss the specific facts of that matter. However, as noted previously, we do believe that we have facts sufficient to lead to a finding that McDon-

ald's is a joint employer under the current Board standard articulated as recently as September 2014 in the CNN America Inc. & Team Video Services LLC case.

Question. The memo is helpful in detailing what a franchisor and franchise can do to avoid joint employment findings. Will the General Counsel's office release a memo detailing what they should not do?

Answer. Thank you for your acknowledgement of the usefulness of the Advice memo in providing guidance to the public. There is no plan to release a memo detailing what franchisors and franchisees should not do since the joint employer relationship comes up in a variety of contexts, not just the franchise model. I commend you to our public website where there are a number of Advice memos, as well as Board decisions, regarding cases with joint employer allegations.

Question. Will you reconsider releasing your advice memo regarding the McDonald's case?

Answer. The Office of the General Counsel does not release our work product during the pendency of a meritorious case. Thus, as the McDonald's matter is still an open matter that is currently being litigated, we will not be releasing the related Advice memo in the near future.

Question. What costs have been incurred so far in the McDonald's case? How many Board personnel are devoted to it? Do you have a total budget for the case? Is it fair to say that the prosecution of McDonald's case will cost the taxpayers millions of dollars?

Answer. As to the consolidated complaint issued against McDonald's, this is currently being litigated. We do not currently have a job costing system in place for incurred costs regarding this or any other particular matter. While I am certainly willing to provide an estimate of the costs by reviewing the number of board agents involved in the litigation to date, it will be an estimate as those same board agents have also handled other cases as well during the relevant period. There are currently three full-time and two part-time board agents devoted exclusively to the McDonald's litigation in New York.

Question. If the NLRB adopts a new definition of joint employer in Browning Ferris or any other case, will the Board use that standard in the franchise context? Stated differently, just because your office concludes that under an expansive definition of joint employer as urged by you in your amicus in Browning Ferris there is no joint employment in the case reviewed in the April 28 Freshii advice memo, that is not a guarantee the Board will agree with you, correct?

Answer. You are correct that there is no guarantee that the Board will agree with my position regarding the joint employer standard as urged in the Browning Ferris Industries brief.

SUBCOMMITTEE RECESS

Senator BLUNT. Thank you both for your time today. We will leave the record open for one week for additional questions.

Senator BLUNT. The subcommittee stands in recess.

[Whereupon, at 11:26 a.m., Thursday, May 14, 2015, the subcommittee was recessed, to reconvene subject to the call of the Chair.]